

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COY PHELPS,

Plaintiff,

v.

DAVID WINN, BRADLEY POTOLICCHIO,
and HOWARD HAAS,

Defendants.

Civ. No. 05-CV-40003-GAO

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendants David Winn, Bradley Potolicchio, and Howard Haas, collectively the “Defendants,”¹ through their undersigned counsel, herein respond to the Amended Complaint of the plaintiff, Coy Phelps (“Plaintiff”), pro se, as follows:²

¹ By Order dated 27, 2007, the Court dismissed several causes of action and defendants from Plaintiff’s Amended Complaint. The only surviving defendants in this action are David Winn, Bradley Potolicchio, and Howard Haas. The only surviving claims are: (1) that when Plaintiff was transferred to the Federal Medical Center in Devens, Massachusetts (“FMC Devens”), Defendant Winn would not allow him to keep his religious material, while others of different religious persuasion were allowed to keep their religious material; (2) that Defendant Potolicchio assaulted Plaintiff without reason and filed a false disciplinary report causing Plaintiff to be housed on disciplinary detention; and (3) that Defendant Haas did not exercise his independent professional judgement when he allowed Plaintiff to be placed in a locked room.

² Because the majority of Plaintiff’s Amended Complaint is not set forth in numbered paragraph form, and other portions of the Amended Complaint are numbered (but those numbers are recycled throughout the Amended Complaint), Defendants have added numbers (all beginning with C—) to the margins of the Amended Complaint (as set forth in Exhibit A to this Answer). Defendants refer to the numbered paragraphs of Exhibit A in their Answer to the Amended Complaint. Other than the numbers added to the margins, Exhibit A is a true and correct copy of Plaintiff’s Amended Complaint.

C-001. Defendants admit that the Court has jurisdiction of this matter under 28 U.S.C. §1331. The Defendants deny the remaining allegations asserted in this paragraph.

C-002. Defendants deny the allegations asserted in this paragraph.

C-003. Defendants admit that the Plaintiff is Coy Phelps Coy Phelps, #78872-011, whose mailing address is FMC Devens, P. O. Box 879, Ayer, Massachusetts, 01432.

C-004. Defendants do not have to answer because the allegations against all of the individuals named in Plaintiff's Amended Complaint, except for Defendants Winn, Potolicchio, and Haas, have been dismissed pursuant to the Court's Order, dated September 27, 2007. Defendants admit that Defendants Winn, Potolicchio, and Haas are being sued in their official capacities. Defendants deny the remaining allegations asserted in this paragraph.

C-005. Defendants do not have to answer because the allegations against all of the individuals named in Plaintiff's Amended Complaint, except for Defendants Winn, Potolicchio, and Haas, have been dismissed pursuant to the Court's Order, dated September 27, 2007. Defendants admit that Defendants Winn, Potolicchio, and Haas are employed at FMC Devens.

C-006. Defendants do not have to answer because the allegations against all of the individuals named in Plaintiff's Amended Complaint, except for Defendants Winn, Potolicchio, and Haas, have been dismissed pursuant to the Court's Order, dated September 27, 2007. Defendants admit that Defendants Winn, Potolicchio, and Haas are employed at FMC Devens. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-007. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-008. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains a question to which no response is required; and (3) the U.S. Attorney is not a named defendant in this action. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-009. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-010. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains a question to which no response is required; and (3) the U.S. Attorney is not a named defendant in this action. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-011. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-012. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-013. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-014. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-015. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-016. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-017. Defendants do not have to answer because this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-018. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains a question to which no response is required; and (3) the U.S. Attorney is not a named defendant in this action. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-019. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-020. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-021. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-022. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-023. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-024. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-025. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-026. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-027. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-028. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-029. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-030. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-031. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-032. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-033. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-034. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-035. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-036. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-037. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-038. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-039. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-040. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-041. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-042. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-043. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-044. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-045. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-046. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-047. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-048. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-049. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-050. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-051. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-052. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-053. Defendants deny the allegations asserted in this paragraph.

C-054. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-055. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-056. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-057. Defendants deny the allegations asserted in this paragraph.

C-058. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the

Defendants deny the allegations asserted in this paragraph.

C-059. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-060. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-061. Defendants deny the allegations asserted in this paragraph.

C-062. Defendants admit that Plaintiff approached Defendant Potolicchio in Defendant's office, and Plaintiff handed Defendant Potolicchio an inmate request to staff. Defendants deny the remaining allegations asserted in this paragraph.

C-063. Defendants deny the allegations asserted in this paragraph.

C-064. Defendants admit that: (1) Plaintiff approached a cart that was in the hallway; (2) Defendant Potolicchio believed that Plaintiff removed something from the cart; and (3) Defendant Potolicchio inquired into what Plaintiff removed from the cart. Defendants deny the remaining allegations asserted in this paragraph.

C-065. Defendants admit that Defendant Potolicchio searched Plaintiff in order to determine whether and what Plaintiff had removed something from a cart in the hallway. Defendants deny the remaining allegations asserted in this paragraph.

C-066. Defendants deny the allegations asserted in this paragraph.

C-067. Defendants deny the allegations asserted in this paragraph.

C-068. Defendants deny the allegations asserted in this paragraph.

C-069. Defendants admit that Plaintiff was taken to disciplinary segregation. Defendants deny the remaining allegations asserted in this paragraph.

C-070. Defendants deny the allegations asserted in this paragraph.

C-071. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-072. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-073. Defendants deny the allegations asserted in this paragraph.

C-074. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-075. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-076. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-077. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains

legal conclusions to which no response is required; and (3) this paragraph contains a question to which no response is required. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-078. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-079. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-080. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains a question to which no response is required. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-081. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-082. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-083. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-084. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants deny the allegations in this paragraph.

C-085. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants deny the allegations in this paragraph.

C-086. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-087. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-088. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-089. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-090. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-091. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-092. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-093. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains legal conclusions to which no response is required. To the extent an answer is required, Defendants deny the allegations asserted in this paragraph.

C-094. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-095. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-96. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants deny the allegations asserted in this paragraph.

C-097. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-098. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-099. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-100. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-101. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-102. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-103. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-104. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-105. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-106. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-107. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-108. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-109. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants admit that Plaintiff was previously found not guilty by reason of

insanity and currently is a civil committee. Defendants deny the remaining allegations asserted in this paragraph.

C-110. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-111. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-112. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-113. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-114. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-115. Defendants deny the allegations asserted in this paragraph.

C-116. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-117. Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-118. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-119. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains legal conclusions to which no response is required; and (3) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-120. Defendants do not have to answer because this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, Defendants deny the allegations asserted in this paragraph.

C-121. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; (2) this paragraph contains legal conclusions to which no response is required; and (3) this paragraph contains a question to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-122. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-123. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent that an answer is required, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and, therefore, deny the allegations asserted in this paragraph.

C-124. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-125. Defendants do not have to answer because the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-126. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-127. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph

contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-128. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-129. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-130. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-131. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-132. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-133. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-134. Defendants do not have to answer because: (1) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (2) this paragraph contains legal conclusions to which no response is required. To the extent that an answer is required, Defendants deny the allegations asserted in this paragraph.

C-135. Defendants do not have to answer because: (1) this paragraph of the Amended Complaint consists of a prayer for relief to which no response is required; and (2) the allegations in this paragraph were dismissed pursuant to the Court's Order of September 27, 2007; and (3) this paragraph contains legal conclusions to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

C-136. Defendants do not have to answer because this paragraph of the Amended Complaint consists of a certification by Plaintiff to which no response is required. To the extent an answer is required, the Defendants deny the allegations asserted in this paragraph.

The United States denies each and every allegation in Plaintiff's Amended Complaint not previously specifically admitted or otherwise qualified.

DEFENSES

FIRST: The Amended Complaint fails to state a claim upon which relief can be granted under the United States Constitution.

SECOND: The Amended Complaint fails to state a claim upon which relief can be granted under the Civil Rights Act, 42 U.S.C. § 1983.

THIRD: The Court lacks subject matter jurisdiction to entertain Plaintiff's Amended Complaint.

FOURTH: Defendants plead the defense of qualified immunity.

FIFTH: Defendants assert that Plaintiff's Amended Complaint must be dismissed because Plaintiff failed to properly, fully, and timely exhaust his administrative remedies.

SIXTH: Defendants assert that Plaintiff's Amended Complaint must be dismissed because Defendants did not violate Plaintiff's civil or due process rights. Further, Plaintiff lacks evidence to support his claim that Defendants violated his civil rights, due process rights, and/or rights under the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

SEVENTH: To the extent Plaintiff seeks to recover punitive or exemplary damages against the Defendants (who are agents of the United States), the Defendants plead the defenses of sovereign immunity and lack of subject matter jurisdiction, under 28 U.S.C. § 2674.

EIGHTH: To the extent Plaintiff seeks to recover attorney's fees and costs against the Defendants (who are agents of the United States), he is not entitled to such costs due to his pro se status.

WHEREFORE, the Defendants answer that Plaintiff should take nothing by his Amended Complaint and prays that judgment, together with interest, disbursements, costs, and any other just and appropriate relief, be rendered in favor of the Defendants.

Respectfully submitted,

MICHAEL J. SULLIVAN

United States Attorney

By: /s/ Sonya A. Rao
SONYA A. RAO
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

DATE: December 3, 2007

CERTIFICATE OF SERVICE

I certify that, on December 3, 2007, I caused a copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** to be served, via first class mail, postage pre-paid, on the following pro se Plaintiff:

Coy Phelps, #78872-011
FMC Devens
P. O. Box 879
Ayer, Massachusetts 01432

By: /s/ Sonya A. Rao
SONYA A. RAO
Assistant U.S. Attorney
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

05-40003

ORIGINAL
FILED

CASE NUMBER

FILED
IN CLERKS OFFICE

ON

UNITED STATES DISTRICT COURT FEB -2 P 3:28

DISTRICT OF MASSACHUSETTS

U.S. DISTRICT COURT
DISTRICT OF MASS.

COY PHELPS

PETITIONER

-V-

05-40003

DAVID WINN, AND MIKE BOLLINGER, AND

JAMES DOLD, AND S. THOMPSON, AND

S. HARVEY, AND B. POTOLICCHIO, AND

J. DAVIS, AND J. FLETCHER, AND

W. BLAZON, AND H. HAAS, K. LEONARD, AND

J. SONNEGA, et. al

RESPONDENTS

FIRST AMENDED

PERSONAL INJURY AND A CIVIL RIGHTS

COMPLAINT

DATE: 1-30-2005

Coy Phelps

IN PRO SE

COY PHELPS 78872-011

FMC-DEVENS

P.O. BOX 879

AYER, MASSACHUSETTS.

01432

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

COY PHELPS

PETITIONER

-V-

DAVID W. ON MIKE BOLLINGER,

JAMES DOLD, S. THOMPSON, S. HARVEY,

B. POTOLICCHIO, J. FLETCHER,

J. DAVIS, W. BLAZON, H. HAAS,

K. LEONARD, J. SONNESA, ET AL.

RESPONDENT(S)

CASE NO: 05-40003-GAO

A

PERSONAL INJURY

AND A

CIVIL RIGHTS

COMPLAINT

(A BIVENS ACTION)

I

JURISDICTION AND AUTHORITY

C-001

THIS COURT HAS JURISDICTION TO REVIEW THIS COMPLAINT AND TO GRANT RELIEF AND REMEDY UNDER BIVEN V SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS, 1971, 403 US 388, 29 LEd2d 619, 91 S. CT 1999, AND 5 USC 701-706 (JUDICIAL REVIEW OF AGENCY ACTIONS), 28 USC 1331 (FEDERAL QUESTION), 28 USC 1343 (CIVIL RIGHTS VINDICATION), 28 USC 1346 (FEDERAL TORTS), 28 USC 2201-2202 (DECLARATORY JUDGMENT), 28 USC 2674-2680 (US LIABILITY), 42 USC 233 (PUBLIC HEALTH SERVICE), AND 42 USC 1988 (COMMON LAW - ATTORNEY FEES), AND THE AMERICANS WITH DISABILITIES ACT (42 USC 12101), RELIGIOUS FREEDOM ACTS (42 USC 2009bb - 2009cc), AND FREEDOM OF INFORMATION/PRIVACY ACT (5 USC 552a(g)(1)).

II

EXHAUSTION OF ADMINISTRATIVE REMEDIES

C-002 THE PETITIONER (HEREAFTER PETELP) HAS EXHAUSTED ADMINISTRATIVE REMEDIES
281333 (MIL ACTIONS AND WAIVERS AND CIRCUMSTANCES) 267518 (CIVILIAN MILITARY RULES).

III

PARTIES

PETITIONER:

C-003 THE PETITIONER IN THIS ACTION IS COY PETELP 78872-011 AND HAS
A MAILING ADDRESS OF FMC-DEVENS, 42 PATTON ROAD, P.O. BOX 879,
AYER, MASSACHUSETTS, 01432;

RESPONDENTS:

C-004 1 ALL OF THE RESPONDENTS ARE SUED IN THEIR PERSONAL AND INDIVIDUAL
CAPACITIES;

C-005 RESPONDENTS DAVID WILKIN, MIKE BOLLINGER, JAMES BELL, S. HARVEY K. LEONARD,
J. FLETCHER, B. POTEMKIN, J. DAVIS, W. BLAZIN, AND J. SONNEGA ARE EMPLOYED AT
THE U.S. BUREAU OF PRISONS AND WORK AT THE FEDERAL MEDICAL CENTER (FMC)
AT DEVENS, MASSACHUSETTS AND HAVE A BUSINESS MAILING ADDRESS OF 42
PATTON ROAD, P.O. BOX 880, AYER, MASSACHUSETTS, 01432.

C-006 RESPONDENT S. THOMPSON IS EMPLOYED BY THE U.S. PUBLIC HEALTH SERVICE
AND ASSIGNED TO DUTY IN THE U.S. BUREAU OF PRISONS AND WORKS AT FMC-
DEVENS AND HAS A MAILING ADDRESS OF 42 PATTON ROAD, P.O. BOX 880,
AYER, MASSACHUSETTS, 01432.

IV

STATEMENT OF THE ISSUES

- C-007 1. IS PHELPS LAWFULLY UNDER THE JURISDICTION OF 18 USC 4243?
- C-008 2. DID THE U.S. ATTORNEY GENERAL MISAPPLY THE FEDERAL MENTAL HEALTH LAWS?
- C-009 3. DOES THE U.S. BUREAU OF PRISONS HAVE LAWFUL CUSTODY OF PHELPS OR ANY OTHER INMATE COMMITTED UNDER 18 USC 4243 (INMATE ACQUITTED) OR 18 USC 4246 (OTHER CIVIL COMMITMENTS)?
- C-010 4. DID THE U.S. ATTORNEY GENERAL VIOLATE SUBSECTION (1) OF 18 USC 4247 BY PLACING PHELPS IN FEDERAL CONFINEMENT INSTEAD OF STATE, LOCAL, OR PRIVATE CONFINEMENT?
- C-011 5. DID THE EMPLOYEES AND MEMBERS OF THE U.S. BUREAU OF PRISONS ACT IN CLEAR ABSENCE OF ALL LAWFUL JURISDICTION AND AUTHORITY?
- C-012 6. CAN A UNCONVICTED CIVIL MENTAL PATIENT (PHELPS) LAWFULLY SUFFER THE SAME ENVIRONMENT, ATMOSPHERE, CONDITIONS, DISCIPLINES, PUNISHMENTS, CARE, AND TREATMENT AS CONVICED AND SENTENCED CRIMINAL PRISONERS WITHOUT VIOLATING FEDERAL LAW, THE U.S. CONSTITUTION, AND U.S. v. JONES, 1983, 463 US 354?
- C-013 7. ARE THE EMPLOYEES OF THE U.S. PUBLIC HEALTH SERVICE, OR THE EMPLOYEES OF THE U.S. BUREAU OF PRISONS RESPONSIBLE FOR THE DAY-TO-DAY DIRECT CARE AND TREATMENT OF CIVIL INMATES COMMITTED UNDER 18 USC 4243 OR 18 USC 4246 (SUCH AS 18 USC 4042, 18 USC 4247(c), AND 28 CFR 0.95-0.96)?
- C-014 8. HAVE THE RESPONDENTS COMPLIED WITH THE TERMS OF 18 USC 4243 AND 18 USC 4247(2) AND (3)?
- C-015 9. CAN U.S. BUREAU OF PRISON RULES AND REGULATIONS ESTABLISHED FOR CONVICTED PRISONERS BE LAWFULLY APPLIED TO UNCONVICTED CIVIL MENTAL PATIENTS?
- C-016 10. DID THE B.O.P. STAFF, EMPLOYEES, AND MEMBERS DENY, DEPRIVE, AND VIOLATE THE CONSTITUTIONAL, STATUTORY, CIVIL, AND COMMON LAW GUARANTEED FREEDOMS, LIBERTIES, RIGHTS, PRIVILEGES, IMMUNITIES, PROTECTIONS, AND SAFEGUARDS OF PHELPS?
- C-017 11. HAVE ALL BOP STAFF USED PROFESSIONAL JUDGMENT AS REQUIRED BY Youngberg v. Romeo, 1982, 457 US 307?

C-018 II DID PHELPS SUFFER IRREFRAGABLE PHYSICAL, MENTAL, EMOTIONAL, SPIRITUAL, AND LEGAL LOSS, HARM, INJURY, ANGUISH, PAIN, AND SUFFERING BECAUSE OF THE ACTS, ACTIONS, REACTIONS, AND OMISSIONS OF THE U.S. ATTORNEY GENERAL AND THE BOP STAFF AND EMPLOYEES?

IV

BACKGROUND

C-019 DURING THE CULTURAL, SOCIAL, AND RACIAL UPHRAVEL AND REVOLUTION OF THE 1960's, 1970's, AND 1980's, PHELPS WAS CONVERTED TO THE NAZI RELIGION AND INCORPORATED A CHURCH IN THE STATE OF CALIFORNIA AND BEGAN TEACHING THE TENETS AND BELIEFS OF HIS RELIGION AS PRESENTED IN THE SCRIPTURES OF THE CHRISTIAN HOLY BIBLE. HE PROSELYTIZED RACIAL PURITY AND RACIAL SEGREGATION AS WELL AS WHITE SUPREMACY AS THE FUNDAMENTAL COMMANDMENTS OF GOD. HE IDENTIFIED (AS DID JESUS) THE JEWS AS BEING DEVILS FROM HELL AND ALL NON WHITES AS BEING THE RESULTS OF MUXBREEDING OF SATAN WITH THE MONKEY KINGDOM AND EVOLUTIONIZING BY GEOGRAPHIC ADAPTATION. HE RECEIVED HUNDREDS OF DEATH THREATS FROM JEWS AND OTHERS AND SUFFERED ASSAULTS AND PROPERTY LOSS, BECAUSE OF HIS SINCERELY HELD SHARED RELIGIOUS BELIEFS.

C-020 IN 1989 PHELPS WAS ARRESTED ON CHARGES OF BOMBING JEW SYNAGOGUES, THE HOMES OF JEW RABBIS, AND SCHOOLS, THAT TARGET BLACK SUPREMACY.

C-021 PHELPS CLAIMED TO BE INNOCENT AND THAT HE WAS BEING FRAINED IN A INTERNATIONAL JEW CONSPIRACY. EVERYONE BELIEVED THIS TO BE A DELUSION THAT QUALIFIED PHELPS FOR A INSANITY PLEA.

C-022 IN JUNE OF 1986 PHELPS WAS FOUND NOT GUILTY BY REASON OF INSANITY (NGRI)

AND WAS COMMITTED TO THE CUSTODY OF THE U.S. ATTORNEY GENERAL PURSUANT TO 18 USC 4243(c) WHO, IN TURN, PLACED PHELPS IN THE CUSTODY OF THE DIRECTOR OF THE U.S. BUREAU OF PRISONS WHO, IN TURN, DELEGATED HIS AUTHORITY TO VARIOUS WARDENS OF VARIOUS PRISONS IN THE FEDERAL SYSTEM.

C-023

PHELPS WAS UNWAKEN IN HIS INTERNATIONAL CONSPIRACY CLAIM AND THIS "DELUSION" KEPT HIM INCARCERATED.

C-024

THEN, SEVEN YEARS AFTER HIS INCARCERATION, BEKIN, THE DISTRICT ATTORNEY OF SAN FRANCISCO, CALIFORNIA RAIDED THE OFFICES OF A JEW ORGANIZATION (ANTI-DEFAMATION LEAGUE OF BIRTH BIRTH) AND SEIZED ALL RECORDS AND DOCUMENTS. IN THE SEIZED RECORDS WAS A DOSSIER ON PHELPS THAT SHOWED PHELPS WAS ACTUALLY INNOCENT OF THE CRIMES AND THAT HIS CLAIM OF BEING FRAMED IN A INTERNATIONAL CONSPIRACY WAS ACTUALLY TRUE AND WAS NEVER A DELUSION AT ALL.

C-025

THE DISTRICT ATTORNEY NOTIFIED THE DEPARTMENT OF JUSTICE (DOJ) AND THE U.S. BUREAU OF PRISONS OF THE DISCOVERED EVIDENCE.

C-026

NEITHER THE DOJ OR THE BOP MADE ANY EFFORT TO EFFECT THE RELEASE OF PHELPS BECAUSE THEY CONSIDERED THE RELIGIOUS TEACHINGS OF PHELPS TO BE POLITICALLY INCORRECT AND DANGEROUS.

C-027

PHELPS MADE REPEATED ATTEMPTS TO FIND RELIEF FROM THE COURTS, BUT EVERY TIME THE COURT WAS READY TO RULE ON THE ISSUE, THE BOP WOULD TRANSFER PHELPS TO ANOTHER JUDICIAL CIRCUIT AND THEN RESIT INTO COURT WITH A MOTION TO DISMISS ON THE GROUNDS OF MOOTNESS. AFTER THE THIRD TIME, THE 8TH CIRCUIT SAID "WE NOTE THAT PHELPS HAS BEEN TRANSFERRED TWICE BEFORE TO ADJUDICATE THIS ISSUE. WE HOPE THIS IS NOT A PATTERN." (PHELPS V. US FEDERAL GOVERNMENT, SC1994, 15 F3d 735.) TIME HAS MADE NO CHANGE.

C-028 PHILIPS HAS BEEN TRANSFERRED REPEATEDLY TO MEET THE ISSUE OF FALSE IMPRISONMENT (RESTATE CONVICTION) AND THE 3RD COURT WENT IN A DELIBERATE MANNER. IN ADDITION, A BOP PSYCHIATRIST (DR. STEVEN LUCH) AND A BOP PSYCHOLOGIST (DR. MICHAEL HARRINGTON) REPORTED TO THE COURT THAT THEY HAD BOTH (AND VERIFIED) THE EVIDENCE THAT PHILIPS WAS ACTUALLY INMATE AND HAD NEVER BEEN MENTIONED IN COURT PROCEEDINGS AND NEVER BEEN RELEASED. IN 2004, PHILIPS WAS TRANSFERRED TO SPEC-BUSINESS WHERE HE IS TODAY.

FACTS

C-029 1. PHILIPS IS NOT UNDER THE JURISDICTION OF 18 USC 4243:

(A) THE STATUTE REQUIRES A CRIME - A VIOLATION OF A CRIMINAL LAW;

(1) THE GOVERNMENT HAS ALREADY ADMITTED (IN OPEN COURT) THAT PHILIPS

(A) DID NOT COMMIT A CRIME,

(B) DID NOT VIOLATE ANY LAW,

(C) DID NOT VIOLATE ANY KIND OF PROBATION OR RELEASE CONDITION,

(D) DID NOT VIOLATE ANY KIND OF COURT ORDER,

(E) DID NOT CONSPIRE WITH ANYONE TO COMMIT A CRIME,

(F) DID NOT ASSOCIATE WITH ANYONE ENGAGED IN CRIMINAL ACTIVITY.

(B) THE GOVERNMENT KNOWS THAT PHILIPS CANNOT LEGITIMATELY BE SUBJECTED TO 4243

(E) 18 USC 4001(C) STATES THAT NO CITIZEN WILL BE DETAINED, OR IMPRISONED, UNLESS HE HAS VIOLATED A LAW,

(SINCE 4243 REQUIRES A CRIME AND PHILIPS DID NOT COMMIT A CRIME, HE IS NOT UNDER THE JURISDICTION OF THE STATUTE AND THE PROVISIONS AND TERMS OF THE STATUTE DOES NOT APPLY TO HIM)

(D) THE STATUTE MAKES THE U.S. ATTORNEY GENERAL THE ONE RESPONSIBLE TO OVERSEE THE OPERATION OF THE PROVISIONS OF THE STATUTE;

C-030 **I.** THE FEDERAL GOVERNMENT DOES NOT HAVE A FEDERAL CIVIL HOSPITAL IN WHICH TO CONFINED FEDERAL INSANITY ACQUITTees, AS THE STATUTE REQUIRES, BUT IT DESPERATELY NEEDS ONE (FOULHA V LOUISIANA, 1994, 504 US 71); MACLESTER V CLEGG, WDMo 1969, 305 FSupp 175; JONES V MARRIS, 801964, 339 F2d 535) SEE DAVIS V RUTHERFORD 10001, 264 B3 86 AT 110

(A) THE COURTS HAVE CONTINUOUSLY HELD THAT THE FEDERAL MEDICAL CENTERS IN THE U.S. BUREAU OF PRISON SYSTEM ARE PRISONS, NOT HOSPITALS, AND THOSE CONFINED THEREIN SUFFER INCARCERATION, NOT HOSPITALIZATION (WILLIAMS V RICHARDSON, 801973, 481 F2d 558, US V HANCOCK, DOC 1989, 125 FSupp 616) REGARDLESS OF THE LABEL (VAN SIREN V CLEGG, 801971, 437 F2d 534) BECAUSE, REGARDLESS OF THE NAME (MEDICAL CENTER), IT OPERATES, FUNCTIONS, AND IS ADMINISTERED AS A PRISON BY BOP STAFF TRAINED IN PENOLOGY (RAWLES V US, 801964, 331 F2d 41) WHEN A FACILITY LOCKS PEOPLE IN CELLS, RESTRICT PRIVILEGES, DISCIPLINE AND PUNISH PEOPLE FOR VIOLATIONS OF RIGIDLY ENFORCED RULES, REQUIRES OBTAINING AND SUBMISSION TO AUTHORITY, AND CONDUCTS ACTIVITIES BEHIND WALLS OR HIGH SECURITY FENCES, THEN THE FACILITY IS A PRISON - NOT A HOSPITAL (COOPERMAN V HARRIS, DCApp 1969, 419 F2d 617). IF THE FACILITY IS ADMINISTERED BY THE U.S. ATTORNEY GENERAL AND NOT THE SECRETARY OF THE DHEHS, THEN IT IS A PRISON - NOT A HOSPITAL (FREST V CLEGG, WDMo 1970, 315 FSupp 599)

(B) EVEN IF THE FEDERAL GOVERNMENT CONSTRUCTED A PHYSICAL BUILDING AND PUT A SIGN ON IT READING "CIVIL HOSPITAL", THE GOVERNMENT STILL COULD NOT CONFINED PEOPLE IN IT, BECAUSE THERE ARE NO PROVISIONS IN THE LAWS THAT ALLOW FOR FEDERAL CONFINEMENT.

(1) FIRST, CONGRESS MUST MODIFY THE STATUTE TO INCLUDE FEDERAL CONFINEMENT, THEN IT MUST CONSTRUCT A PHYSICAL CIVIL HOSPITAL, AND THEN STAFF IT WITH NON-BUREAU OF PRISON EMPLOYEES - TO MEET THE REQUIREMENTS OF 18 USC 4243, 4247, AND SUPREME COURT LAW

C-031 3. THE U.S. ATTORNEY GENERAL ABUSED HIS DISCRETION, MADE OBVIOUSLY ERRONEOUS INTERPRETATIONS AND CONCLUSIONS OF LAW AND FACT, AND MISAPPLIED THE FEDERAL MENTAL HEALTH LAWS:

(A) UNDER SUBSECTION (E) OF 18 USC 4243, THE ATTORNEY GENERAL HAS ONLY 3 OPTIONS:

- (1) RELEASE THE INMATE ACQUIRED TO THE COMMUNITY UNCONDITIONALLY
- (2) CHARGE AN APPROPRIATE STATE OFFICIAL TO ASSUME RESPONSIBILITY OF THE ACQUIRED

(A) UNDER 18 USC 4247(i) THE ATTORNEY GENERAL MAY PETITION A STATE COURT FOR A STATE CIVIL COMMITMENT INTO A STATE MENTAL HOSPITAL PURSUANT TO STATE LAWS

- (3) CONFINING ("HOSPITALIZING") THE INMATE ACQUIRED TO A "SECURE" FACILITY DEPENDING UPON THE INDIVIDUAL CHARACTER OF THE PERSON AND THE NATURE OF THE CRIME (18 USC 4247(L))

(B) IF THE ATTORNEY GENERAL CHOOSES TO "HOSPITALIZE" THE ACQUIRED, HE MUST —

- (1) PUT PRISONERS IN THE CUSTODY OF THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

(2) IT IS THE SECRETARY WHO IMPLEMENTS THE PROVISIONS OF THE FEDERAL MENTAL HEALTH LAWS (18 USC 4247(i)(D))

(3) THE ATTORNEY GENERAL MISAPPLIED THE LAW AND PUT PRISONERS IN THE CUSTODY OF THE DIRECTOR OF THE U.S. BUREAU OF PRISONS AS IF PRISONERS WAS A CONVICTED PRISONER WHO HAD BEEN FOUND GUILTY AND SENTENCED TO A TERM OF PUNISHMENT

(4) HE MUST MAKE SURE THE FACILITY HAS BEEN APPROVED AND CERTIFIED BY THE SECRETARY OF THE DHHS AS BEING A HOSPITAL;

(A) THE SECRETARY HAS NEVER APPROVED ANY B.O.P. FACILITY, WHY? BECAUSE IT WOULD BE ILLEGAL. ALL THE B.O.P. FACILITIES ARE CONSTRUCTED UNDER PUBLIC LAW AS PRISONS AND ARE ACCREDITED AS PRISONS. THEY CANNOT BE BOTH HOSPITALS AND PRISONS AND CERTAINLY ONLY AS A PRISON.

(3) HE MUST MAKE SURE THE FACILITY HAS A REHABILITATION PROGRAM THAT MEETS THE STANDARDS OF 18 USC 4247(a) AND WHICH HAS BEEN APPROVED BY THE SECRETARY OF THE DHS (18 USC 4247(i)(c))

(A) NONE OF THE BOP FACILITIES MEET THE REHABILITATION STANDARDS, AND NO REHABILITATION PROGRAM HAS EVER BEEN APPROVED BY THE SECRETARY OF THE DHS

(4) IF THE STATE COURT WILL NOT COMMIT THE ACQUITTEE TO A STATE MENTAL HOSPITAL PURSUANT TO STATE LAWS, THEN THE ATTORNEY GENERAL HAS ONLY 3 OTHER OPTIONS IF HE STILL WISHES TO "HOSPITALIZE" THE ACQUITTEE. HE CAN —

(1) ENTER INTO A CONTRACT WITH A STATE (OR POLITICAL SUB-DIVISION)

(A) NOTE THAT THE ATTORNEY GENERAL CAN STILL HOSPITALIZE PRISONERS IN A STATE MENTAL HOSPITAL BY CONTRACT — BUT NOW HE IS PAYING THE BILLS

(2) ENTER INTO A CONTRACT WITH A LOCALITY, OR

(3) ENTER INTO A CONTRACT WITH A PRIVATE AGENCY

(18 USC 4247(i)(3)) THESE ARE HIS ONLY OPTIONS

C-032 THERE ARE NO OPTIONS — NO PROVISION — FOR FEDERAL CONFINEMENT

C-033 **Q** THE U.S. BUREAU OF PRISONS DOES NOT HAVE LAWFUL CUSTODY OF PIRPLES?

(A) THERE ARE NO PROVISIONS IN 18 USC 4243 OR 18 USC 4247 FOR FEDERAL CONFINEMENT

(B) THE U.S. ATTORNEY GENERAL IS REQUIRED TO PUT PIRPLES IN THE CUSTODY OF THE SECRETARY OF THE DHS — NOT THE U.S. BUREAU OF PRISONS

(C) UNDER 18 USC 4042 (AND 28 CFR 0.95-0.96) THE B O P. ONLY HAS AUTHORITY OVER PENAL AND CORRECTIONAL INSTITUTIONS (NOT HOSPITALS)

(1) 18 USC 4243 REQUIRES PIRPLES TO BE "HOSPITALIZED"

(D) 18 USC 4042 (AND 28 CFR 0.95-0.96) GIVES THE BUREAU OF PRISONS AUTHORITY ONLY OVER THOSE CHARGED WITH CRIMES AND THOSE CONVICTED OF CRIMES (NOT CIVIL COMMITMENTS / INSANITY ACQUITTees);

(1) THERE ARE NO PROVISIONS IN THE FEDERAL MENTAL HEALTH LAWS THAT ALLOWS, OR AUTHORIZES, FEDERAL CONFINEMENT FOR INSANITY ACQUITTees;

(A) NO FEDERAL AGENCY CAN ENACT A RULE OR REGULATION GIVING ITSELF THAT AUTHORITY;

(B) EVEN CONGRESS CANNOT MAKE A FEDERAL REGULATION WITHOUT A STATUTE AUTHORIZING THAT REGULATION; *

(C) THE BUREAU OF PRISONS HAS SEVERAL RULES AND REGULATIONS ESTABLISHED WITHOUT STATUTORY AUTHORITY;

(1) SOME CURRENT RULES AND REGULATIONS WERE ESTABLISHED ON STATUTORY AUTHORITY WHICH HAS BEEN REPEALED OR ABROGATED;

(D) 28 CFR 551.101(a)(4) AND BUREAU OF PRISON POLICE 7331.04 ALLOWING A CIVIL COMMITMENT / INSANITY ACQUITTee TO BE TREATED AS A CONVICTED AND SENTENCED PRISONER VIOLATES THE SCHEME AND INTENT OF 18 USC 4243 AND 4246 AND VIOLATES U.S. v JONES, 1983, 463 US 354 n. 369 (INSANITY ACQUITTees CANNOT BE TREATED AS CONVICTED PRISONERS) SEE U.S. v SPILL, 719 F.2d 852 (PRINCIPLES OF CRIMINAL SENTENCING DO NOT APPLY TO INSANITY ACQUITTees)

* EVEN THE COURTS CANNOT ACT WITHOUT STATUTORY AUTHORITY (U.S. v SOTOLO, 714 F.2d 944 F.3d 1031 AT 1040)

C-034 5 ALL OF THE STAFF, EMPLOYEES, PERSONNEL, AND MEMBERS (FULL TIME, PART TIME, CONSULTS, VOLUNTEERS, AND CONTRACTED WORKERS) OF THE U.S. BUREAU OF PRISONS ARE IN CLEAR ABSENCE OF ALL LAWFUL JURISDICTION AND AUTHORITY IN THE CUSTODY, CONFINEMENT, CARE, AND TREATMENT OF (AND PROVIDING SERVICES FOR) INSANITY ACQUITTED AND OTHER CIVIL COMMITMENTS (18 USC 4243 AND 18 USC 4246)

(A) THERE ARE NO PROVISIONS IN THE FEDERAL MENTAL HEALTH LAWS ALLOWING, OR AUTHORIZING, FEDERAL CONFINEMENT:

(1) WHEN A STATUTE IS SILENT ON A ISSUE, OR HAS NO PROVISION, THERE IS A CORRESPONDING LACK OF AUTHORITY (KEENE V US, 1993, 508 US 200, BFP V RESOLUTIONS, 1994, 511 US 531)

(A) SINCE 18 USC 4243 AND 18 USC 4247 DOES NOT AUTHORIZE THE BOP TO HAVE CUSTODY OF PHEOPS, THE EMPLOYEES OF THE BOP HAVE NO LAWFUL AUTHORITY OVER PHEOPS. THEY CANNOT DO ANYTHING TO PHEOPS OR FOR PHEOPS WITHOUT VIOLATING HIS RIGHTS

(B) THE BOP MEMBERS KNOW (AND UNDERSTAND) THE LEGAL DIFFERENCE BETWEEN A CIVIL COMMITMENT AND A CRIMINAL SENTENCE, AND THE LEGAL DIFFERENCE BETWEEN A UNCONVICTED CIVIL PATIENT AND A CONVICTED CRIMINAL PRISONER BUT REFUSE TO TREAT THEM DIFFERENTLY

(1) THE BOP TREATS A UNCONVICTED CIVIL PATIENT AS A CONVICTED AND SENTENCED PRISONER BY RULES AND REGULATIONS, BUT IN CUSTOM AND PRACTICE, THE UNCONVICTED CIVIL MENTAL PATIENT IS TREATED FAR WORSE THAN SENTENCED PRISONERS AND WITH GREATER DISPARITY AND INTOLERANCE.

(2) EACH TIME A GROUP OF PEOPLE VISITS THE FACILITIES TO INVESTIGATE COMPLAINTS AND CONDITIONS, THE MENTAL HEALTH UNITS AND PATIENTS ARE AVOIDED

(3) ON COLLISION WITH A MENTAL PATIENTS DOES COMPLAIN, HE IS PUNISHED FOR COMPLAINTING (CORRECTIVE THERAPY)

C-035 6. THE COURTS ADMIT TO A DISTINCTION BETWEEN CIVIL COMMITMENTS AND CRIMINAL SENTENCES, AND BETWEEN UNCONFINED AND CONFINED, AND BETWEEN A UNCONFINED CIVIL PATIENT AND A CONFINED CRIMINAL PRISONER:

(A) PAGE V TOLSON, 402000, 201 F.3d 1136 at 1140 (PRISON LITIGATION ACT DOES NOT APPLY TO CIVIL COMMITMENTS); KING V CROGGSWANT, D.MAS 1991, 53 F.Supp.2d 117 at 133 (SAME)

(B) GRAVES V COLLIER, DDC 1935, 607 F.Supp 1186 (THE COURT HAS EVER HELD THAT A CIVIL COMMITMENT IS THE SAME AS A CRIMINAL SENTENCE OR THAT HOSPITALIZATION WAS THE SAME AS INCARCERATION); ADAMS V CHINEZ, 701912, 475 F.2d 343 (SAME)

(C) COLE V HILLMAN, DDC 1976, 411 F.Supp 705 (THE BASIS FOR INCARCERATION IS TO PROTECT THE PUBLIC - THE BASIS FOR A CIVIL COMMITMENT IS TO TREAT THE ILL)

(D) US V JAMES, 701999, 174 F.3d 514 (THE PRINCIPLES OF CRIMINAL SENTENCING DOES NOT APPLY TO INSANITY ACQUITTALS)

(E) US V JONES, 1983, 463 U.S. 574 (INSANITY ACQUITTALS CANNOT BE TREATED AS CONFINED PRISONERS)

(F) JENNINGS V NIS MEDICAL CENTER, S.D.MT 1992, 736 F.Supp 326 (CRIMINAL CONFINEMENT IS NOT THE SAME AS A CIVIL COMMITMENT); WATSON V HERVEY, D.C.MA 1979, 472 F.Supp 1061 (SAME)

(G) SCHULZ V MARTIN, 1986, 407 U.S. 253 (CONFIRMING THE MEDICALITY THE IN A CIVIL COMMITMENT IS IMPERMISSIBLE); SUPRENT V TOLSON, 1960, 304 U.S. 479 (SAME); FRENCH V BUCKENHAM, MDAL 1977, 428 F.Supp 1351 (SAME); LYNCH V BARRETT, MDAL 1989, 336 F.Supp 373 AFF 651 F.2d 337, 744 F.2d 1458 (SAME); CAMERON V FOMES, D.MAS 1992, 753 F.Supp 1511 (SAME); DAVIS V BILSON, D.C.MT 1973, 461 F.Supp 542, POWELL V HANCOCK, 1984, 451 U.S. 1 (SAME)

YET THE COURTS (IN THIS CASE) HAVE TREATED PHILIPS EQUAL TO, OR WORSE THAN, CONFINED PRISONERS UNDER A SENTENCE OF CRIMINAL PUNISHMENT.

(A) THE COURT SENT PHILIPS TO PRISON INSTEAD OF SENDING HIM TO A HOSPITAL AS REQUIRED BY LAW

(B) THE COURT RE PHILIPS AS CRIMINAL PROBATION CONDITIONS INSTEAD OF PSYCHIATRIC CONDITIONS

(C) THE COURT HAD PHILIPS SUPERVISED BY A CRIMINAL PROBATION OFFICER WHO WAS QUALIFIED

BY HAVING AN EDUCATION, SKILLS OR EXPERIENCE IN MENTAL HEALTH

(D) THAT PHILIPS WANTED ON A BUREAU UNLAWFUL, SIMPLY BECAUSE SHE DISAGREED WITH THE REGIMEN OF PHILIPS

(E) 18 USC 3603(4)(A) IS UNCONSTITUTIONAL BECAUSE IT COMPLIES WITH THE FEDERAL MENTAL HEALTH LAWS (SEE US v. MORGAN, 10178, 851 F.2d 529) AND IT COMPLIES WITH THE SCOPE AND INTENT OF THE MENTAL HEALTH LAWS (SEE US v. ABUSMOR, 501935, 761 F.2d 854)

C-036 7. 18 USC 4031 AND 18 USC 4247(G) REQUIRES "INDIVIDUALIZED" CARE AND TREATMENT ACCORDING TO THE CHARACTER OF THE INDIVIDUAL. THE BOP HAS A POLICY OF TREATING ALL MENTAL PATIENTS Alike. (IN 20 YEARS OF INCARCERATION, PERHAPS HAS NEVER HAD "INDIVIDUALIZED" CARE AND TREATMENT. 42 USC 10341 IS THE MENTAL PATIENTS BILL OF RIGHTS

SEE WELSON v. HAYES, 40 MATH 1712, 491 F.2d 322 (INDIVIDUALIZED TREATMENT REQUIRED) SCOTT v. U.S. COMMISSIONERS, 201587, 513 F.2d 1016 (same), CANTORINO v. WILSON, 1582, 546 F.2d 1174 (CONSTITUTIONAL THERAPY PROHIBITION), SCOTT v. HAYES, 40 MATH 1712, 491 F.2d 322 (MUST BE INDIVIDUALIZED IN THE LEAST RESTRICTIVE AND LEAST RESTRICTIVE SETTING) THE BOP IS THE OPPOSITE: THE FOR MENTAL PATIENTS IN THE MOST RESTRICTIVE SETTING - AUTOMATICALLY. SEE ALSO WYATT v. ANDERSON, 501974 503 F.2d 1305, WYATT v. STICKNEY, 40 MATH 1974, 344 F.Supp 373, 344 F.Supp 367, 344 F.Supp 1541, US v. FRUETT, 491 F.2d 322; YOUNGBERG v. LEE AT 359 U.S. (DIFFERENT PATIENTS HAVE DIFFERENT LIBERTY INTERESTS AND REQUIRE DIFFERENT LEVELS OF TREATMENT) SEE RENNEL v. KLEIN, 478 F.2d 1131, 476 F.Supp 1204, 653 F.2d 376, TROD v. JONES, 1953, 306 U.S. 90 (LABELING SOMETHING A "TREATMENT" DOES NOT IPSE FACTO MAKE IT A TREATMENT AND NOT A PUNISHMENT) "CONDUCTED THE WAY" FOR THE MENTALLY ILL IN THE BOP, IS THE SAME AS DISCIPLINARY SECLUSION FOR OTHER PRISONERS. SEE LANDMAN v. REPUBLIC 1971, 335 F.Supp 621, 334 F.Supp 1212, 334 F.Supp 1302; MONTAGUE v. HAYES, 1970, 427 U.S. 245 (TREATMENT CANNOT BE MORE OR LESS DIFFERENT)

C-037 8. THE BOP EMPLOYEES VIOLATE THE "PARE-WATCH" PRINCIPLES OF 18 USC 4243(P). THE BOP MUST MAKE "ALL" REASONABLE EFFORTS TO CAUSE THE STATE TO ASSUME RESPONSIBILITY. THE BOP PLACES ONE ATTEMPT FOR YEAR. WHEN THE PATIENT IS NO LONGER MENTALLY ILL, THE DIRECTOR MUST IMMEDIATELY NOTIFY THE COURTS. THE BOP WAITS UNTIL THE ANNUAL REPORT IS DUE

C-038 9. EVEN THOUGH THE INSURANCE ACQUIRED HAS BEEN GIVEN ABSOLUTION FOR THE CRIMES, THE BOJ ALWAYS (EVEN AFTER THE ARMY GAVE PASS) USE THE CRIME TO KEEP A PERSON INCARCERATED, THAT INCLUDES DECISIONS REGARDING, RED JUDICIAL, AND COUNCIL OF STATE. IT INCLUDES THE RECOMMENDED PUNISHMENT FOR PERSONS WHO HAVE NOT BEEN RELEASED (LEONARD J. STERN, 1983, 186 PL. 506) SEE DOUGLAS J. STERN, 1984, 419 PL. 617 (THERE COMES A TIME WHEN THE CRIME MUST BE PUT ASIDE WHEN DETERMINING A RELEASE) MILWARD J. STERN, 1985, 486 PL. 547 (THE FURTHER THE DISTANCE IN TIME BETWEEN THE CRIME AND THE EVALUATION, THE LESS THE CRIME CAN BE USED) DOUGLAS J. STERN, 1986, 434 PL. 511, 433 PL. 503, 422 PL. 543 (25 YEARS OUTSTANDING) EACH TIME PIERCE IS INTERVIEWED, THE CRIME IS RE-ISSUED EVEN THOUGH THE GOVERNMENT AND THE PIERCE DID NOT COMMIT A CRIME.

C-039 10 THE DOCTORS DO NOT USE THE "CRIME SURVEY" APPROACH TO MAKING A DIAGNOSIS (SEE US v KROBES, 401994, 25 FEB 419) BUT RELY ENTIRELY ON THE "THE RECORD" (DIAGNOSIS BASED BY PREVIOUS DECISIONS IN YEARS PAST)

AS WHEN PIERCE RECEIVED THE FINAL DECISION, HE HAD DIAGNOSED PIERCE AS "ATTEMPTED SUICIDE. PIERCE" HE MERELY REBORN SPINNING THE DIAGNOSIS OF THE 1985 FINAL DECISION FROM THE RECORD. THAT IS PIERCE'S CHARGE BECAUSE THE FINAL DECISION WOULD A DIAGNOSIS ON PIERCE'S CHARGE OF BEING PART OF A INTERNATIONAL TERROR CONSPIRACY. BUT IN 1972 PIERCE'S CHARGE WAS FOUND TO BE TRUE - SO THE FINAL DECISION DIAGNOSIS WOULD BE CORRECT. YET BOJ DOCTORS ALTHOUGH REBORN SPINNING THAT DIAGNOSIS WITHOUT MAKING ANY GOVERNMENT EVALUATION WITHOUT THE RECORD

C-040 11. THE BOJ STAFF FLAGRANTLY VIOLATE THEIR OWN RULES THAT THREATS FROM PIERCE, SEE POSITION OF STATE POLICE, 1985, 484 PL. 103 (EMPLOYEES MUST FOLLOW AGENCY RULES) PIERCE v US, 1981, 358 PL. 225 (DEPARTMENT RULED BY RULES OF AGENCY) GRAND JURY, 1981, 113 PL. 337, 335 PL. 1284

C-041 Policy statement 6002 et seq. DETERMINES THE CARE AND TREATMENT OF MENTAL PATIENTS AND 48 C.F.R. 541 DETERMINES DISCIPLINE OF COMBAT PRISONERS. THE BOP PROVIDES CIVIL PATIENTS AS CAPTURED PRISONERS ARE PROVIDED WITHOUT ANY RIGHTS TO THEIR MENTAL STATES (SEE LYNNBERRY v. RAYNE, 1976, 533 F.2d 621, 354 F.2d 1212, 354 F.2d 1302 (RULS MUST BE FROM CIVIL MENTAL HOSPITAL NOT A PRISON); MYER v. CLEGG, 1966, 494 F.2d 684 (5th Cir.))

C-042 THE EMPLOYEES OF THE BOP VIOLATE THE RULES GOVERNING FEDERAL EMPLOYEES CONDUCT AND DISCIPLINARIES (BOP Policy 364.03 AND 3140.6)

C-043 (A) FOR EXAMPLE ALL EMPLOYEES MUST DISPLAY NAME IDENTIFICATION TAGS ON THEIR CLOTHING AND MUST REVEAL THEIR NAMES TO INMATES UPON REQUEST.

(B) EMPLOYEES DO NOT WEAR NAME PLATES BUT WHEN THEY DO, THEY CLOAK IT SO INMATES CANNOT SEE THE NAME

(C) EMPLOYEES EITHER REFUSE TO DISCLOSE THEIR NAMES OR GIVE ONLY A LAST NAME (E.G. "SMITH" OR "JONES") OR GIVE ONLY A FIRST NAME (E.G. "SMITH") WHEN ASKED "SMITH" OR "JONES" AND WHEN ASKED "SMITH" OR "JONES" WILL REVEAL A FIRST NAME OR INITIAL.

C-044 (B) EMPLOYEES ARE PROHIBITED FROM ABUSING OR DISRESPECTING INMATES (ESPECIALLY THE MENTALLY ILL) BUT EMPLOYEES DISREGARD THE FEDERAL EMPLOYEES CONDUCT RULES.

(C) EMPLOYEES ABUSE THE MENTALLY ILL FREQUENTLY BECAUSE THE MENTALLY ILL NEVER COMPLAIN. THEY ARE SO ILL THEY DON'T KNOW THEIR RIGHTS ARE BEING VIOLATED OR THEY THINK THEY MUST HAVE DONE SOMETHING TO DESERVE THE ABUSE BUT DON'T KNOW WHY. EMPLOYEES TAKE ADVANTAGE OF THIS CONDITION TO VENT THEIR OWN FRUSTRATIONS. WHEN PATIENTS DO COMPLAIN, THE COMPLAINT IS VIEWED AS A PRODUCT OF THE MENTAL ILLNESS RATHER THAN A LEGITIMATE COMPLAINT.

THERE IS NO ADVOCATE FOR THE MENTALLY ILL AS REQUIRED BY 42 U.S.C. 10843.

C-045 (C) THE EMPLOYEES DO NOT EXERCISE PROFESSIONAL JUDGMENT (SHAW v. STARK HOUSE, 1916, 416 F.2d 1135; WILLIAMS v. RAYNE, 1981, 451 U.S. 377)

C-046 THE BCP STAFF ARE NOT TRAINED IN THE CARE AND TREATMENT OF THE MENTALLY ILL. THEY ARE TRAINED ONLY IN DEFENSE AND ANY MENTAL HEALTH SKILLS OR CONCERNS ARE FORWARDED UPON BY THE B.C.P. OFFICER, DOCTORS, NURSES, NEVER INTERACT WITH MENTAL PATIENTS EXCEPT AT A FIXED SCHEDULED APPOINTMENT. THE STAFF LOCK THEMSELVES IN THE OFFICE, PLAY CARDS, WATCH TV ON THE INTERNET, PLAY VIDEO GAMES, SOCIALIZE, ETC. B.T. NEVER TALK TO INMATES - NEVER INTERACT WITH INMATES - IT IS A BCP POLICY.

- C-047
- THEY SEIZE PROPERTY OF INMATES WITHOUT GIVING A RECEIPT (IN VIOLATION OF RULES)
 - THEY MAKE UP THEIR OWN RULES OR A MIXTURE OF THEIR OWN AND OTHERS' RULES
 - THEY VIEW MENTAL PATIENTS AS SUB-SPECIES AND CONSIDER THEM WITH ANTI-ETHIC ATTITUDE
 - THEY MAKE FALSE REPORTS AND ACCUSATIONS AGAINST INMATES
 - THEY INTIMIDATE, COERCED, AND THREATEN MENTAL PATIENTS
 - THEY REPRISALIZE AGAINST MENTAL PATIENTS WITH VIOLENCE (AT THE APPROVAL OF SUPERVISORY STAFF)
 - THEY EXERT ABSOLUTE CONTROL AND DEMAND INSTANT OBTEDIENCE AND SUBMISSION OF ALL MENTAL PATIENTS. NO PATIENT CAN EXPRESS INDIVIDUALISM OR AUTHORITY.
 - THERE ARE NO DISCIPLINE REFLECTIVES FOR MENTAL PATIENTS - NO CHAIRS, NO BENCHES - EXERCISE IS 1 HOUR PER WEEK - IF THE 'THERAPIST' IS AVAILABLE. THERE ARE 3 TELEVISIONS BROADCASTING ON 3 DIFFERENT CHANNELS (BUT RULES REQUIRE FILMS NOT TO HAVE SPARKS TO INSURE PEACE AND QUIET) (PITTING THE INMATE'S PREJUDICE)
 - BEHAVIOR CONTROL IS LEFT TO THE INMATES TO ESTABLISH A 'PECKING ORDER'
 - INMATES ARE UNREPRESENTED - NO LEGISLATIVE TREATMENT

- C-048
- NO MATTER WHAT MENTAL STATUS (OR THE CRIME) OF INMATES NOT SENT TO DOORS FOR MENTAL REASONS - THEY GO DIRECTLY TO OPEN POPULATION. BUT FOR INMATES WHO WERE THE MENTAL LABILE, THEY GO TO MAXIMUM SECURITY REGIMENS OF THE TYPE OF CRIME AND REGARDLESS OF THE ACTUAL MENTAL STATUS (THIS VIOLATES THE LEAST RESTRICTIVE SETTING PRINCIPLE (YOUNGBERG AT 324) JOHNSON & JOHNSON, 1999, 1519, 154 P. 275)

C-049

- inmates may not interact with proper hygiene supplies or adequate bedding
- Rules requiring "quiet time" but staff ignore rules
- Quiet time is mandatory in prisons but not in mental hospitals. The BOP requires only one strand of light - the FRC officials require 3 per day.
- Only flashlights are supposed to be used at night for counts (rolls) but officers and judges turn on the room lights of inmates rooms to awaken the inmate to make them move their body. This is counter therapeutic to "patients" but is routine at "prisons" (these - officers leave the lights on - switch on during roll)
- Mental patients must eat their meals within 12 minutes (including the time it takes to go to the dining room, waiting line to get the food, and turn in the tray to the wash room).
- Property purchased at another institution is not allowed at BOP even if it is not sold at BOP's property is destroyed without compensation or due process.
- The level of civil patients are treated as the male for sentenced patients are treated
 - (1) Mail from the courts are not considered legal mail and is read by staff
- Rules for mental patients are arbitrary:
 - (1) No staples allowed - after room search mail with envelopes stapled
 - (2) Staff strip inmates (to inmates) with staples
- inmates cannot touch cleaning supplies - but are required to clean their rooms
- working bench (table) cannot contain butter - but can butter to clean toilet
- No communication to staff or others
 - (1) Unit officers read incoming and outgoing mail and memos contrary to BOP rules
- Civil patients cannot make phone calls during day hours

C-050 12. SUPERVISORY STAFF AT FMC-DEVENS FAIL TO PROPERLY AND ADEQUATELY TRAIN AND TO SUPERVISE SUBORDINATES. THERE IS NO ROUTINE TRAINING OF MENTAL HEALTH STAFF IN THE DAY-TO-DAY CARE AND TREATMENT OF MENTAL PATIENTS, FINALLY MENTAL PATIENTS ARE EITHER IGNORED WITH INDIFFERENCE OR ABUSED AND MISTREATED

C-051 SUPERVISORS ARE LIABLE FOR THE DEPRIVATION AND VIOLATION OF RIGHTS CAUSED BY THEIR SUBORDINATES. SEE MCLELLAND v. FREEDMAN, 1001979, 610 F.2d 693 AT 696; YBARRA v. REYES 740 F.2d 1202, 901984, 123 F.2d 675 AT 680-681; WAGNER v. BOENKE, 501980, 621 F.2d 675 AT 671; BOARD OF COUNTY COMMISSIONERS v. BREWSTER, 1997, 520 US 517 AT 404-411; CITY OF CHICAGO v. HARRIS, 1989, 489 US 518 AT 388; MATTHEWS v. FELIX, 701991, 913 F.2d 744

C-052 MENTAL HEALTH STAFF MUST HAVE EXTRA TRAINING AND CLOSER SUPERVISION (MORAN v. DC, 1953, 603 F.2d 154, AFF 824 F.2d 104), A WARDEN HAS A DUTY TO INSURE THAT THE STAFF IS PROPERLY TRAINED (JOHNSON v. LOUHART, 801971, 763 F.2d 326, 941 F.2d 705)

C-053 PHELPS HAS SUFFERED INJURY BECAUSE OF THE FAILURE TO TRAIN AND SUPERVISE STAFF

C-054 13. THE EMPLOYEES AT FMC-DEVENS (AND AT ALL BOP PRISONS) ARE ACTING IN CLEAR ABSENCE OF ALL JURISDICTION AND AUTHORITY IN THE CUSTODY, CONFINEMENT, CARE, AND TREATMENT OF PHELPS

(A) 18 USC 4001(b) STATES NO CITIZEN SHALL BE DETAINED OR IMPRISONED WITHOUT STATUTORY AUTHORITY.

VII

C-055 CAUSES OF ACTION

FIRST CAUSE OF ACTION

DAVID WILKIN IS SUED FOR ESTABLISHING RULES CONTRARY TO BOP RULES, FOR NOT MAKING RULES SPECIFIC TO CIVIL MENTAL PATIENTS, FOR CONSIDERING THE APPROPRIATE VIOLATIONS OF SUBORDINATES

AND FOR FAILING TO PROPERLY AND ADEQUATELY TRAIN AND SUPERVISE HIS
SUBORDINATES, THAT CAUSED PHELPS IRREPARABLE INJURY.

C-056

SECOND CAUSE OF ACTION:

MIKE BELLINGER, JAMES DOLD, S. JITOMACH, AND S. HARVEY ARE SUED FOR
FAILING TO PROPERLY AND ADEQUATELY TRAIN AND SUPERVISE THEIR SUBORDINATES
IN THE CARE AND TREATMENT OF THE MENTALLY ILL, THE LEARNING OF BOP
RULES, AND THE RIGHTS OF INMATES. THEY HAVE FAILED TO PROPERLY AND
ADEQUATELY TRAIN THEIR SUBORDINATES IN DISTINGUISHING THE DIFFERENCE IN
CIVIL COMMITMENTS (CIVIL PATIENTS) AND CONVICTED PRISONERS AND HAVE
FAILED TO PROTECT THE RIGHTS OF CIVIL PATIENTS, AND FOR ALLOWING
SUBORDINATES TO TREAT CIVIL PATIENTS AS CRIMINAL PRISONERS.

C-057

THIRD CAUSE OF ACTION:

WHEN PHELPS ARRIVED AT EMC-DEVERS, HE WAS INTERVIEWED BY SEVERAL
BOP EMPLOYEES AND WAS EVALUATED BY RESPONDENT H. HAYS WHO AGED
IN CLEAR ABSENCE OF ANY INSTRUCTION TO CONFINE PHELPS (ACCOMMODATION)
IN MAXIMUM SECURITY IN VIOLATION OF THE 4TH AMENDMENT (UNREASONABLE SEIZURE)
AND 5TH AMENDMENT (CRUEL AND UNUSUAL PUNISHMENTS - FIRST APPLICABLE THROUGH THE
5TH AMENDMENT BECAUSE PHELPS IS A CIVIL PATIENT) AND THE 5TH AMENDMENT
(COMMON LAW) AS WELL AS VIOLATING THE AMERICAN WITH DISABILITIES ACT, AND
BOP RULES, 18 USC 4081.

C-058

HAYS DEPARTED FROM THE STANDARDS OF HIS PROFESSION AND DID NOT
EXERCISE PROFESSIONAL JUDGMENT BY NOT MAKING AN INDEPENDENT EVALUATION
AND DIAGNOSIS BUT MERELY RUBBER STAMPED THE OPINION OF PREVIOUS

EXAMINERS WITH A TOTAL INDIFFERENCE AND DISREGARD AS TO THE ACCURACY OF THE RECORD. HARRIS WAS TAKEN A OATH TO UPHOLD AND DEFEND THE U.S. CONSTITUTION AND THE LAWS OF THE UNITED STATES SO HE KNOWS THE LAWS, AND UNDERSTANDS THE LAWS, BUT STILL ACTED CONTRARY TO THE LAWS. PHELPS WAS LUCKY, RATIONAL, COMPLIANT, AND FRIENDLY YET WAS TAKEN TO MINIMUM SECURITY AND PLACED IN A LOCKED ROOM AT THE ORDERS OF HARRIS. HARRIS VIOLATED 28 CFR 541. et seq., BOP Policy 6000. et seq., BOP Policy 3004.03 et seq., ^{FILED CC} Youngberg v. Romeo, 1982, 457 US 307 AND Beshaw v. Winnebago, 1989, 437 US 189 AND Rochin v. California, 1952, 342 US 165

C-059 FOURTH CAUSE OF ACTION:

RESPONDENT J. FLETCHER VIOLATED BOP RULE ^{FILED CC} 3004.03 AND DEPARTED FROM THE STANDARDS OF HIS PROFESSION (JURISDICTION TYPE OF DOCTOR) AND DID NOT EXERCISE PROFESSIONAL JUDGMENT IN PERFORMING THE DUTIES ASSOCIATED TO A CORRECTIONAL OFFICER (ACTING LIKE A COP) WHEN HE THREATENED TO PUT PHELPS IN DISCIPLINARY SUPERVISORY FOR MERELY DISAGREEING WITH HIM. "I KNOW MORE ABOUT BOP RULES THAN YOU," HE SAID. "WORTH A BET?" PHELPS SAID. THEN FLETCHER THREATENED TO PUT PHELPS "IN THE HOLE (N-1)" FOR DISAGREEING WITH HIM. PHELPS HAD NOT VIOLATED ANY RULES NOR WAS HE DISORDERLY OR DISRUPTIVE. HE WAS UPSET PHELPS VERY MUCH TO REALIZE THAT EVEN THE DOCTORS DISREGARD THE RULES OF CONDUCT AND CARELESSLY VIOLATE OTHER RULES AND THE RIGHTS OF THE MENTALLY ILL BY ACTING ARBITRARILY, CAPRICIOUSLY, AND UNPREDICTABLY.

C-060 FIFTH CAUSE OF ACTION:

RESPONDENT J. DAVIS ACTED IN CLERICAL ABSENCE OF ALL JURISDICTION WHEN HE VIOLATED BOP RULE ^{3604.03} 3604.03 BY SCREAMING AND YELLING AT PHELPS IN A THREATENING, HOSTILE, AND MENACING MANNER JUST AFTER PHELPS HAD COMPLETED A CONVERSATION WITH DR. RIGGS (WHO WAS STILL PRESENT AS A WITNESS). DAVIS IS A MACE NOSE AND KNOWS THAT HIS ACTIONS ARE A DEVIATION FROM THE STANDARDS OF HIS PROFESSION BUT HE ACTED ANYWAY TO CAUSE PHELPS TO FEAR FOR HIS SAFETY (BEING 71 YEARS OLD). PHELPS IS A HIGHEST RISK PATIENT AS WELL AS HAVING 2 STAPLES (BECAUSE TWO OFFICERS HANDCUFFED HIS ARMS BEHIND HIS BACK AND BEAT HIM WITH FISTS, FOOT, AND METAL FLASHLIGHTS BECAUSE THE AREA OUTSIDE HIS ROOM WAS "UNTIDY")

C-061 SIXTH CAUSE OF ACTION:

RESPONDENT B. POTOLICCHIO ACTED IN ABSENCE OF ALL JURISDICTION AND VIOLATED FEDERAL REGULATION ~~28~~ CFR 541. et seq., BOP POLICY ^{3604.03} 3604.03, 18 USC 1081 AND OTHER FEDERAL LAWS WHEN HE (WITH COMPLETE INDIFFERENCE TO THE STATUS OR CONDITION OF PHELPS) ASSAULTED PHELPS, MADE FALSE CHARGES AGAINST PHELPS, MADE A FRAUDULENT WRITTEN INCIDENT REPORT ON PHELPS THAT CAUSED PHELPS TO BE PLACED IN DISCIPLINARY DETENTION FOR A WEEK. POTOLICCHIO ALSO VIOLATED PHELPS RIGHTS UNDER THE 4th, 5th, 8th, AND 9th AMENDMENTS TO THE U.S. CONSTITUTION.

C-062

ON 11-23-04 AT APPROXIMATELY 10:30 PM PHELPS WENT TO THE OFFICERS STATION ON UNIT N-3 TO GIVE POTOLICCHIO A CONFIDENTIAL MEMO ADDRESSED TO COMMANDER K. LECHARD INFORMING LECHARD THAT THE STAFF ON N-3 WERE IN VIOLATION

OF FEDERAL LAWS AND BOP RULES IN THE CARE AND TREATMENT OF THE DISABLED MENTALLY ILL. PETELICCHIO OPENED THE MEMO (VIOLATION OF BOP RULES) AND READ THE MEMO (VIOLATING ANOTHER RULE) AND QUESTIONED PHELPS AS TO THE CONTENT OF THE MEMO (VIOLATING THE 1ST AMENDMENT AND ANOTHER B.O.P. RULE). PETELICCHIO BECAME HOSTILE AND ANGRY AND SCREAMED FOR PHELPS TO GET OUT OF THE OFFICE, AND PHELPS COMPLIED;

C-063

WHEN PHELPS WAS OUTSIDE OF THE THRESHOLD OF THE DOOR, HE TURNED AND SAID "YOU'RE NOT WEARING A NAME TAG (A VIOLATION OF BOP RULES)" WHAT IS YOUR NAME OFFICER?" "DON'T WORRY ABOUT MY NAME" HE SCREAMED AS HE STOOD AND APPROXIMATED PHELPS MENTALLY (PETELICCHIO IS ABOUT 6'4" TALL AND WEIGHS OVER 250 POUNDS AND IS 40 YEARS YOUNGER THAN PHELPS) PHELPS ASK "ARE YOU REFUSING TO GIVE ME YOUR NAME? THAT'S AGAINST BOP RULES" HE SCREAMED "GET-AWAY-FROM-MY-OFFICE" PHELPS COMPLIED AND WALKED ABOUT LOOKING AT THE PICTURES ON THE WALLS, THE CLOCK IN THE OFFICE, ETC. (PHELPS WAS WAITING FOR THE INMATE TELEPHONE TO MAKE A CALL TO COUNSELING)

C-064

PHELPS APPROACHED A CLEANNING CART THAT HAD AUTHORIZED SUPPLIES ON IT FOR INMATES TO CLEAN THEIR ROOMS. IT WAS PARKED IN THE HALLWAY OUT OF THE OFFICE. SUDDENLY PETELICCHIO LEAPED FROM HIS CHAIR AND STARTED SCREAMING FOR PHELPS TO GET INSIDE THE OFFICE. PHELPS WALKED IN. "WHAT DID YOU TAKE OFF THAT CART AND PUT IN YOUR POCKET?" HE SCREAMED ANYWAY OUT OF CONTROL. "I DIDN'T PUT ANYTHING IN MY FUCKIN' POCKET" PHELPS SAID. PETELICCHIO SEARCHED PHELPS AND FOUND NOTHING.

C-065

"GET AGAINST THE DOOR" HE YELLED, THEN QUICKLY CHANGED HIS MIND AND TOOK PHELPS IN THE HALLWAY. "GET AGAINST THAT WALL" HE SCREAMED, THEN QUICKLY CHANGED HIS MIND AGAIN AND YELLED FOR PHELPS TO GO TO THE OTHERSIDE OF THE HALLWAY

* NOT ONLY DOES STAFF NOT WEAR NAME TAGS, NO OFFICE HAS THE NAME OF THE STAFF ON IT. TO FIND A OFFICE IS JUST A GUESSING GAME. BOP RULES STATE ALL OFFICES WILL BE IDENTIFIABLE.

TO LEAN AGAINST THE WALL WITH HIS HANDS ABOVE HIS HEAD AND HIS FEET APART.*

C-066 PHELPS COMPLIED WITH THE ORDER BUT POTELOICCHIO WAS NOT SATISFIED WITH THE DISTANCE BETWEEN PHELPS' FEET AND YELLED TO MOVE THE FEET FURTHER APART. "I CAN'T" PHELPS SAID, "THAT'S AS FAR AS I CAN GO. I HAVE A SPINAL INJURY." POTELOICCHIO BECAME MORE OUT OF CONTROL AND SCREAMED FOR PHELPS TO MOVE HIS FEET APART AND SIMULTANEOUSLY KICKING THE RIGHT LEG OF PHELPS, KNOCKING HIS LEG ABOUT 6 INCHES FURTHER APART. PHELPS IMMEDIATELY FELT SEVERE PAIN IN HIS BACK, SPINE, AND LEGS AND CRIED IN PAIN. POTELOICCHIO WAS COMPLETELY INDIFFERENT AND YELLED "I TOLD YOU TO GET THOSE FEET APART."

C-067 THEN THE RIGHT ARM OF PHELPS FELL FROM THE WALL TO HIS SIDE. "GET THAT ARM UP" POTELOICCHIO SCREAMED. "I CAN'T DO THIS FOR LONG," PHELPS SAID, "I HAVE MEDICAL PROBLEMS. I'VE HAD A HEART ATTACK AND IF I KEEP MY HANDS ABOVE MY HEAD, I'LL PASS OUT. I'VE HAD 2 STROKES AND I CAN'T HOLD MY RIGHT ARM UP THIS LONG." POTELOICCHIO WAS CALLOUSLY INDIFFERENT AND TOOK THE RIGHT ARM OF PHELPS AND SLAMMED IT AGAINST THE WALL YELLING "GET - THAT - ARM - ON - THE - WALL."

C-068 HE WENT BACK TO THE OFFICE AND TOLD NURSE W. BURTON "I'M GOING TO LEAVE HIM UP. I DON'T LIKE THIS." HE MADE TWO PHONE CALLS AND RETURNED. "WHY DID YOU LEAVE ME?" HE YELLED. "WHAT ARE YOU TALKING ABOUT?" PHELPS ASKED. "YOU JUST COULDN'T SEE?" HE YELLED. "I HEARD YOU." "YOU WERE NOT EVEN THERE." PHELPS SAID "HOW COULD I LEAVE YOU IF YOU'RE NOT THERE?" POTELOICCHIO STAMMERED "YEH - WELL -- YEH - WELL -- -- YEH - WELL."

C-069 PHELPS' RIGHT ARM FELL AGAIN, BUT AT THE SAME TIME OTHER OFFICERS ARRIVED TO ESCORT PHELPS TO DISCIPLINARY DETENTION.

* PHELPS WAS NOT SUPPORTED WHILE MOVING THE WALL. THE ACTION WAS JUST SPITEFUL PUNISHMENT.

C-070

POTOLICCHIO THEN TOOK THE MEMOS PHELPS HAD WRITTEN TO COUNSELOR LEONARD AND SPITEFULLY DESTROYED THEM. HE WENT TO PHELPS' ROOM AND TOOK PHELPS' PROPERTY AND DESTROYED THE PROPERTY SPITEFULLY AND VINDICTIVELY.

C-071

THE NEXT DAY A OFFICER SITUATED A PINK SHEET OF PAPER UNDER THE DOOR WITHOUT SAYING WHAT IS WAS OR WHAT WAS WRITTEN ON IT AND PHELPS COULD NOT READ IT BECAUSE HIS EYE GLASSES WERE SEIZED (AS IT TURNED OUT IT WAS A COPY OF THE INCIDENT REPORT, THE BOP RULES REQUIRE THE REPORT TO BE GIVEN TO THE INMATE WITHIN 24 HOURS AND IF THE INMATE CAN'T READ IT, IT MUST BE READ TO HIM. IT WAS NOT. PHELPS ARGUES THAT IF HE IS GIVEN A DOCUMENT HE CAN'T READ AND IT IS NOT READ TO HIM, IT IS THE SAME AS NOT GETTING THE DOCUMENT AT ALL AND IS A DENIAL OF DUE PROCESS AND VIOLATES BOP RULES.)

C-072

A WEEK LATER PHELPS HAD A DISCIPLINARY HEARING (3 DAYS OVER THE TIME LIMIT TO HOLD A HEARING) AND THE HEARING OFFICER DISMISSED THE CHARGES AS BEING PATENTLY FALSE. "WHEN I FIRST READ THIS REPORT" THE HEARING OFFICER SAID, "I COULD EASILY SEE SOMETHING WAS WRONG WITH IT. IT DIDN'T MAKE SENSE."

C-073

POTOLICCHIO LIED IN THE REPORT; HE FILED A FALSE REPORT; AND HE CAUSED PHELPS TO SUFFER IRREPARABLE HARM AND SUFFERING.

C-074

SEVENTH CAUSE OF ACTION:

RESPONDENT W. BLAZEN ACTED IN CONSPIRACY WITH POTOLICCHIO TO MAKE FALSE CHARGES, SHE ENCOURAGED HIM AND ADVISED HIM. SHE ACTED IN CONCERT AND JOINTLY PARTICIPATED IN THE VIOLATION OF THE RIGHTS OF PHELPS, BOP RULES AND FEDERAL REGULATIONS REQUIRES EMPLOYEES TO INTERVENE WHEN OFFICERS ARE VIOLATING THE RIGHTS OF INMATES AND TO IMMEDIATELY REPORT THE

DEFENDING OFFICER TO SUPERVISORS. SHE DID NOT INTERFERE AND DID NOT REPORT THE ABOVE ASSAULT OR VIOLATIONS. SHE FAILED TO EXERCISE PROFESSIONAL JUDGMENT.

C-075

SHE IS THE NURSE FOR THE UNIT AND IS FAMILIAR WITH THE MEDICAL STATUS AND CONDITION OF PHELPS, BUT STILL DID NOT STOP POTOLICCHIO. SHE KNOWS THAT PHELPS IS A CIVIL PATIENT AND KNOWS THAT MENTAL PATIENTS HAVE RIGHTS EXCEEDING THE RIGHTS OF PRISONERS, AND OTHERS, YET SHE DID NOTHING TO STOP THE ASSAULT AND ABUSE. SHE AND POTOLICCHIO VIOLATED 18 USC 241-242 (CIVIL RIGHTS) 18 USC 1621 et seq (PERJURY) AND OTHER FEDERAL LAWS.

C-076

BLAZEN AND POTOLICCHIO HAD BEEN PLAYING CARD GAMES FOR ABOUT 2 HOURS PRIOR TO THE INCIDENT. THEY NOT ONLY APPEARED TO BECOME INCREASINGLY "FRIENDLY" BUT ALSO BECAME HOSTILE WHEN PHELPS INTERRUPTED THEIR GAMES TO HAND HIM THE MEMO. PHELPS TOLD THE DISCIPLINARY OFFICER, "YOU KNOW WHAT THIS IS ALL ABOUT? POTOLICCHIO JUST WANTED TO IMPRESS A FEMALE WITH HIS MACHISMO AND POWER. THAT'S WHAT THIS IS ALL ABOUT - TRYING TO IMPRESS A FEMALE, BUT ALL HE SUCCEEDED IN DOING WAS TO PROVE HE HAS A CHILDISH INFANTILE MIND WITH THE INABILITY TO MAKE CORRECT DECISIONS AND UNABLE TO CONTROL HIS EMOTIONS. THE HEARING OFFICERS AGREED AND DISMISSED THE CHARGES SAYING "STAY OUT OF TROUBLE."

C-077

EIGHTH CASE OF ACTION:

UNDER THE "INDIVIDUALIZED TREATMENT" OF 18 USC 4031, AND THE "NATURE OF THE CHARACTER" OF 18 USC 4247(c), AND UNDER THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT, AND UNDER THE MENTALLY ILL BILL OF RIGHTS (42 USC 10841) PHELPS MADE A REQUEST FOR A SINGLE ROOM, IN OPEN

POPULATION IN THE LEAST RESTRICTIVE SETTING NOT ONLY BECAUSE OF HIS AGE (71) AND MEDICAL ISSUES, RESTRICTIONS AND LIMITATIONS (STROKE, HEART ATTACK RISK, ARTERITIS, AND OTHERS) BUT ALSO FOR SAFETY AND SECURITY THAT PREVENTS HOSTILE CONSPIRACIES WITH OTHERS WHO DO NOT SHARE THE SAME RELIGIOUS BELIEFS AND FEELS HIS BELIEFS OFFENSIVE AND UNACCEPTABLE TO SUCH A DEGREE THAT THEY BECOME COMBATIVES. PHILIP DOES NOT PROSECUTE HIS RELIGION NOR DOES HE RECRUIT CONVERTS, HOWEVER OTHER INMATES KNEW HIS IDEOLOGIES. HOW?

C-078

AT HIS ~~PREVIOUS~~ ^{PREVIOUS} PRISON, INMATES WOULD DISCUSS CASES OF PHILIP'S PUNISHMENT IN THE LAW BOOKS AND THEN PHOTOCOPY SEVERAL COPIES OF THE CASE AND THEN DISTRIBUTE THE PHOTOCOPIES TO OTHER INMATES WITH THE SOLE INTENT AND SCHEME TO CAUSE PHILIP TO SUFFER IN SOME WAY. THE COPIES WERE ALSO GIVEN TO SELECTED STAFF MEMBERS. MOSTLY PHILIP SUFFERED HARASSMENTS, COERCION, AND SLIGHT REMARKS AND VICE THREATS OR VEILED THREATS. BUT HE ALSO SUFFERED IN OTHER WAYS. BLACK INMATES WOULD FALSELY REPORT THAT PHILIP CALLED THEM A "NIGGER" OR SOMETHING DEROGATORY JUST TO GET PHILIP PUT IN THE HOLE OR MOVED TO ANOTHER UNIT.

C-079

AT HIS PREVIOUS PRISON, INMATE DISTRIBUED COPIES OF CASES TO OTHER BLACK INMATES AND STAFF. HE WAS IMMEDIATELY TRANSFERRED TO ANOTHER PRISON FOR ENDANGERING THE LIFE OF ANOTHER INMATE AND FOR INTERFERING WITH THE THERAPY AND TREATMENT PROGRAM OF OTHERS.

C-080

FIVE DAYS AFTER PHILIP ARRIVED AT FIVE-DEVEN'S THE PRISON A GROUP OF BLACK INMATES, ONE BLACK INMATE REPLIED TO THE OTHERS "THERE'S THAT 'NIGG' M---F---" (INDICATING PHILIP) PHILIP HAD NEVER SEEN THEM BEFORE AND HE IGNORED THE REMARKS, HOW DID THEY KNOW?

C-081 PHELPS WENT TO THE DINING ROOM AND IN THE DINING ROOM WAS THE SAME BUNCHED INMATE THAT HAD BEEN TRANSFERRED FROM BUTNER. THEY ALL LIVED IN THE MENTAL HEALTH UNITS.

C-082 COUNSELOR LEONARD REFUSED TO ASSIGN PHELPS TO A SINGLE ROOM NOTWITHSTANDING THE FACTS OF ELIGIBILITY. ACCORDING TO BOP RULES IT IS THE COUNSELOR WHO ASSIGNS ROOMS AND HE DOES THAT ARBITRARILY WITHOUT SCREENING OR EVALUATING INMATES FOR COMPATIBILITY OR INDIVIDUAL NEEDS. WHATEVER BED IS VACANT IS WHERE THE INMATE GOES. HE VIOLATES THE TERMS OF 18 USC 4281 (INDIVIDUALIZED TREATMENT) AND 18 USC 4247(c) (ACCORDING TO THE CHARACTER OF THE INMATE) ~~AND~~ HE ALSO VIOLATES DESHANEY V WINTERHAGEN, 1981, 459 US 189.

C-083 BUT TO KEEP PHELPS LOCKED IN MAXIMUM SECURITY OR IN A SEMI LOCKED UNIT VIOLATES THE LEAST RESTRICTIVE SETTING REQUIREMENTS OF THE SUPREME COURT. (REMEMBERING THAT PHELPS IS A CIVIL PATIENT AND NOT A CRIMINAL PRISONER, SO THE COURTS MUST EXAMINE PATIENTS RIGHTS - NOT PRISONERS RIGHTS. SEE ROMER V YOUNGBURG, 4191, 644 F.2d — (COURTS CANNOT USE CASE LAW DECISIONS FOR LOCKED PRISONERS TO BE APPLIED TO CIVIL COMMITMENTS) AFFIRMED IN YOUNGBURG V ROMER, 1982, 457 US 307.

C-084 NINTH CAUSE OF ACTION.

PHELPS IS DENIED HIS 1ST AMENDMENT RIGHT TO PETITION THE COURTS (DENIAL OF ACCESS TO THE COURTS).

C-085 TAKEN LITERALLY, PHELPS IS NOT DENIED "ACCESS TO THE COURTS." HE IS DENIED MEANINGFUL ACCESS TO THE COURTS.

C-086 THE RULES (ESTABLISHED BY WARDEN WINK) PROHIBITS PHELPS FROM LEAVING UNIT A-3. EXCEPT TO GO TO THE DINING ROOM FOR MEALS. THE CANNOT GO

TO THE LAW LIBRARY TO CONDUCT LEGAL RESEARCH IN ORDER TO PREPARE DOCUMENTS FOR THE COURTS AND INTERESTED PARTIES. PHILIPS SENT A MEMO TO THE LAW LIBRARY REQUESTING LEGAL RESEARCH ASSISTANCE, BUT THERE WAS NO RESPONSE. HE SENT A MEMO TO CLERICAL LEONARD AND UNIT MANAGER DOWDIE REQUESTING PERMISSION TO GO TO THE LAW LIBRARY BUT NEITHER RESPONDED. THEY WERE INDIFFERENT TO THE REQUESTS.

C-087 PHILIPS GAVE PAPERS TO ANOTHER INMATE (WHO LIVED IN A CROWN UNIT) TO PHOTOCOPY AT THE LAW LIBRARY. THE MACHINES WOULD NOT PHOTOCOPY TWO BLUE INK AND THE CLERICALS WOULD ONLY PERS WITH BLUE INK.

C-088 PHILIPS ASK THE UNIT OFFICER TO USE THE UNIT TYPEWRITER (WHICH EACH UNIT IS REQUIRED TO HAVE) AND WAS INFORMED THAT THE UNITS DO NOT HAVE TYPEWRITERS FOR INMATE USE.

C-089 PHILIPS ASK A PRISONER TO GET SOME FORMS FROM THE LIBRARY (WHICH THE LIBRARY IS REQUIRED TO HAVE) AND SOME ADDRESSES OF COURTS (ETC) AND WAS TOLD THAT THE LIBRARY DID NOT PROVIDE SUCH DOCUMENTS AND PHILIPS WAS INFORMED THAT HE COULD NOT GET THEM FROM OTHER INMATES EVEN THOUGH THE STAFF WILL NOT ASSIST HIM AND WOULD NOT ALLOW HIM TO GO ANYWHERE TO ASSIST HIMSELF. AS AN ADDENDUM TO HIS COMPLAINT,

C-090 PHILIPS REQUESTED SOMEONE TO COPY THIS PETITION, BUT THE REQUEST WAS DENIED UNTIL A CLERK AT THE PETITION RECEIVED IT WAS A LAWSUIT AGAINST BOP EMPLOYEES. IT WAS AGREED THAT PHILIPS WOULD PAY FOR THE PHOTOCOPYING. EXTRA COPIES WERE MADE AND GIVEN TO THE FACILITY ATTORNEY, SOME RESPONDENTS, AND OTHERS. EVEN BEFORE THE COMPLAINT WAS SENT TO THE COURT (BY CLERICAL LEONARD).

C-091 WHEN PHILIPS ARRIVED AT FMC DENVER, HE REQUESTED PERMISSION TO GO TO THE LAW LIBRARY. HIS DOCTOR (HARRIS) APPROVED THE REQUEST. AFTER SOME DELAY OF NOT BEING ALLOWED TO GO, PHILIPS ENQUIRED ABOUT A REASON AND DR HARRIS INFORMED PHILIPS THAT THE UNIT TEAM MEMBERS WAS PUNISHING HIM FOR THE INCIDENT REPORT HE RECEIVED AND WITHOUT THE DISCIPLINARY COMMITTEE DISMISSED AS BEING A FRAUDULENT

REPORT.

C-092 THE TEAM MEMBERS DID NOT GIVE PITEPS ANY DUE PROCESS BEFORE IMPOSING THE PUNISHMENT OF DENYING HIM ACCESS TO THE LAW LIBRARY. ONE OF THE TEAM MEMBERS WAS CASE MANAGER PATE, AND PITEPS HAD ALREADY INFORMED HER THAT THE DISCIPLINARY COMMITTEE HAD DISMISSED THE COMPLAINT AGAINST HIM. HE ASK HER TO EXPUNGE THE INCIDENT REPORT FROM HIS RECORD (WHICH SHE IS AUTHORIZED TO DO) BUT SHE SAID 'THAT'S NOT MY BUSINESS - THAT'S THEIR BUSINESS'. SHE (AND THE OTHER TEAM MEMBERS) DECIDED TO RETALIATE AGAINST PITEPS FOR PERSISTING ON THE INCIDENT REPORT AND TO PUNISH HIM FOR PERSISTING BY DENYING HIM ACCESS TO THE LAW LIBRARY.

C-093 THIS PUNISHMENT WITHOUT ANY DUE PROCESS ALSO VIOLATES DOUBLE JEOPARDY AND IS RETALIATORY AND PUNITIVE PUNISHMENT.

C-094 10th CAUSE OF ACTION: RESTRICTION TO COURT ACCESS:

RULES OF THE BOP REQUIRE ASSISTANTS (INMATES) TO OBTAIN ACCESS TO THE COURTS. PITEPS REQUESTED THAT \$150,00 BE WITHDRAWN FROM HIS ACCOUNT AND TO ISSUE A CHECK MADE PAYABLE TO THE COURT AS A FILING FEE FOR THIS ACTION. THIS IS A RESTITUTION MATTER AND BOP POLICIES PROVIDE THE FREEDOMS: THE MONEY IN QUESTION BELONGS TO PITEPS. PITEPS IS NOT INCARCERATED AND OWNS HIS OWN FUNDS. BOP POLICY STATES THAT INMATES MAY WITHDRAW FUNDS AT ANYTIME AND CAN SEND MONEY TO ANYONE NOT IN VIOLATION OF RULES. THE BOP ONLY HELDS THE MONEY - LIKE A BANK.

C-095 "SUSAN" (BUSINESS OFFICE SUPERVISOR) REFUSED THE REQUEST SAYING THAT SHE HAD SET UP HER OWN NEW PROCEDURES WHEREBY THE INSTITUTION MUST NOW WAIT FOR THE COURT TO REVIEW ANY ACTION (TO DETERMINE ITS MERIT) AND THEN WAIT FOR THE COURT TO ISSUE AN ORDER TO WITHDRAW THE MONEY.

C-096 THIS IS JUST A SHAM TO CREATE OBSTACLES AND BARRIERS FOR INMATES TO

OVERCOME TO GAIN ACCESS TO THE COUNTS. CONSIDERED LOCATED IN FORMER PIERCE THAT
 DURING WHICH CONDUCTED THE PROCEEDURE AFTER IT WAS IMPLEMENTED. THIS PROCEEDURE IS
 DESIGNED SPECIFICALLY TO HARASS, INTIMIDATE AND SUBVERT THE LEGITIMATE FUNCTION. IT ALREADY
 CREATES OBSTACLES TO ACCURACY OF THE COURT

C-097 11th CAUSE OF ACTION:

ON 1-28-2005 JEFFERY SCHWARTZ COLLECTED A GROUP OF INMATES THAT WERE ON "CALL-OUTS"
 (WHICH IS A LIST OF INMATES AND THEIR SCHEDULED ACTIVITIES). PIERCE'S NAME WAS ON THE LIST.
 PRIOR TO THAT, A NURSE HAD NOTIFIED PIERCE THAT HE WAS ON "CALL-OUT" BUT BECAUSE HE WAS ON
 UNIT A-3 (A SOME WORK UNIT) THAT DR. SCHWARTZ, P.M. (WHICHVER P.M. IS) WOULD COME TO THE
 UNIT AND USUALLY THE INMATES TO A GROUP THERAPY ROOM (INMATES ON A-3 MUST BE EXCUSED
 ON "CALL-OUTS. THEY CANNOT LEAVE THE UNIT UNLESS THEY EXCEPT TO GO TO MEALS)

C-098 DR. SCHWARTZ TOLD THE INMATES "YOU ARE SCHEDULED FOR GROUP THERAPY WITH ME IN
 ANOTHER ROOM. YOU DON'T HAVE TO GO IF YOU DON'T WANT TO. YOU HAVE THE RIGHT TO
 REFUSE. IF YOU REFUSE I WILL ASK YOU TO SIGN A REFUSAL FORM (BP-358(6)) AND IF YOU
 SIGN, YOU WILL NOT BE PUT ON "CALL-OUT" AGAIN. I WON'T BOTHER YOU ABOUT IT."

C-099 PIERCE INFORMED SCHWARTZ HE WAS REFUSING AND REQUESTED THE FORM TO SIGN.
 SCHWARTZ SAID PIERCE MUST GO TO GROUP THERAPY AND SIGN THE FORMS THERE AND HE
 MUST STAY IN GROUP THERAPY THE FULL HOUR BEFORE LEAVING THE FORM. PIERCE SAID
 "LET ME GET THIS STRAIGHT I CAN REFUSE TREATMENT BUT YOU ARE REQUIRING ME TO
 RECEIVE THE TREATMENT BEFORE I CAN REFUSE IT? - THE VERY SAME TREATMENT I HAVE
 A RIGHT TO REFUSE?" HE REPLIED "YES."

C-100 PIERCE REFUSED TO GO SAYING THAT WAS THE MOST ILLUSORY THING HE HAD HEARD SINCE
 HIS WIFE WENT TO THE AMAL AND SPENT \$500 DOLLARS ON CLOTHES TO SAVE MONEY/ 40 PAYS
 MRS). SINCE SCHWARTZ SAID NEEDING WAS REQUIRE TO GO, PIERCE RETURNED TO HIS ROOM.

C-101 TO FOUR LATER SCHWEN BROUGHT THE REFUSAL FORM TO PHILIPS FOR PHILIPS TO SIGN. PHILIPS SIGNED THE FORM. SCHWEN SAID "BECAUSE YOU REFUSED TO GO ON CALL OUT AND BECAUSE YOU REFUSED GROUP THERAPY, I'M WRITING A DISCIPLINARY INCIDENT REPORT ON YOU." PHILIPS SAID "LET ME GET THIS STRAIGHT - YOU'RE GOING TO PUNISH ME FOR NOT DOING WHAT I AM NOT REQUIRED TO DO?" "YES HE SAID. 'YOU CAN'T DO THAT' PHILIPS SAID. 'I HAVE A RIGHT TO REFUSE - YOU GAVE ME THAT RIGHT.'" "WELL, YOU HAVE THE RIGHT TO BREAK THE LAW TOO BUT YOU MUST FACE THE CONSEQUENCES" HE SAID. PHILIPS SAID 'THAT'S AS ILLOGICAL AS YOUR OTHER REMARKS - NOONE HAS A RIGHT TO DO A WRONG, THAT'S WHY WE HAVE PRISONS.' "WELL, ANYWAY" HE SAID "I'M WRITING A INCIDENT REPORT ON YOU"

C-102 PHILIPS WENT TO HIS COUNSELOR TO GET A ADMINISTRATIVE REMEDY FORM. THE COUNSELOR REFUSED. PHILIPS WENT TO THE UNIT ADMINISTRATOR AND THE CHAIRMAN TO EXPLAIN THE SITUATION AND THEY REFUSED TO LISTEN TO ANY ACCOUNTS. "IF YOU WERE ON CALL OUT AND YOU DIDN'T GO - YOU GET PUNISHED!" "THAT'S NOT ONLY UNFAIR!" PHILIPS SAID BUT IT'S EXTREMELY UNPROMISING."

C-103 PHILIPS WAS SO DISTRESSED THAT HE COULD NOT EAT HIS MEAL (HE HAD TO SEE THEM AT THE INMATE DINING ROOM) AND HE WAS SO UPSET HE HAD TO SEEK MEDICAL ATTENTION FROM THE NURSE ON THE UNIT (PHILIPS HAS TWO 2 SPICES AND A HEART ATTACK - HE IS 71 YEARS OLD) (UNDER STRESS AND EXCITEMENT CAUSES HIM MEDICAL PROBLEMS)

C-104 12th CAUSE OF ACTION:

PHILIPS DOES NOT COME UNDER THE JURISDICTION OF 18 USC 4243 (INSANITY STATUTE) THE STATUTE REQUIRES A CRIME. THE GOVERNMENT HAS ADMITTED THAT PHILIPS DID NOT COMMIT A CRIME. IN 1992 THE GOVERNMENT DISCOVERED EVIDENCE THAT SHOWED THE MENTAL INNOCENCE OF PHILIPS AND THAT HE WAS NOT MENTALLY ILL (UNDER THE LAW) BUT STILL WOULD NOT RELEASE HIM BECAUSE OF HIS SHARED RELIGIOUS BELIEFS THAT THE GOVERNMENT FOUND OFFENSIVE (NOT UNLAWFUL - JUST OFFENSIVE)

C-105 13th CAUSE OF ACTION

THE U.S. ATTORNEY GENERAL ABUSED HIS DISCRETION MADE CLEARLY ERRONEOUS INTERPRETATIONS AND CONCLUSIONS OF LAW AND FACT, AND MISAPPLIED THE FEDERAL MENTAL HEALTH LAWS. THE LAW REQUIRES PRISONERS TO BE HOSPITALIZED. THE FEDERAL GOVERNMENT DOES NOT HAVE A CIVIL HOSPITAL IN WHICH TO CONFINED INMATE ACQUISITION (FULLIN V LUCIANO, 1994, 504 US 71, WILKINS V RUMANSSEN 801973, 431 F.2d 353, DAVIS V ROBERTS, 102001, 264 F.3d 86) US SENTENCE, 122 F.3d 384

C-106 THERE ARE NO PROVISIONS IN THE FEDERAL MENTAL HEALTH LAWS THAT ALLOWS, OR AUTHORIZES FEDERAL HOSPITALIZATION OR CONFINEMENT. THE ATTORNEY GENERAL HAS ONLY 4 OPTIONS AND ALL THOSE OPTIONS DO NOT INCLUDE ANYTHING FEDERAL (18 USC 4247(i))

C-107 THE U.S. ATTORNEY GENERAL MISAPPLIED THE LAW AND PUT PRISONERS IN FEDERAL CUSTODY.

C-108 14th CAUSE OF ACTION

THE U.S. BUREAU OF PRISONS DOES NOT HAVE LAWFUL CUSTODY OF PRISONERS AND, CONSEQUENTLY, THE EMPLOYEES OF THE BOP DO NOT HAVE LAWFUL JURISDICTION OR AUTHORITY OVER PRISONERS AND CANNOT TREAT PRISONERS AS A CONFINED PRISONER (US V JONES, 1983, 463 US 349). BECAUSE HE IS A UNCONFINED CIVIL MENTAL PATIENT (NOT A CONFINED PRISONER) HE MUST BE TREATED BY RULES OF A MENTAL HOSPITAL - NOT BY THE RULES OF A PRISON (TYLER V CLINE, 1986, 469, 299 F.3d 684; CARRISON JONES, 1992, 193 F.3d 1511)

C-109 THE RESPONDENTS REFUSE TO ACKNOWLEDGE THAT PRISONERS IS A UNCONFINED CIVIL MENTAL PATIENT (AND NOT A CONFINED SENTENCED PRISONER) AND TREATS HIM WORSE THAN SENTENCED PRISONERS UNDER RULES ESTABLISHED FOR ONLY CONFINED PRISONERS

C-110 THE GOVERNMENT FOR THE TREATMENT OF THE MENTALLY ILL IS PROHIBITED IN 42 USC 10341 AND FOY V GREENSWORTH, 1983, 190 CAL RPT 84, 171 CAL 1. SEE MCCARTHY V DOUGHERTY DOUGHERTY, 1991, 770 F.3d 43 AFF 901 F.2d 487

C-111 PRISONERS HAVE THE RIGHT TO REFUSE ANY TREATMENT (ANDERSON V LUCIANO, 1981, 483 US 633, WATKINS V WESTER, 1990, 864 F.2d 695, SILVERMAN V BUNDE, 1983, 314 F.2d 1201, CRAWFORD V SPENCER, 1971, 469 F.2d 172 JONES V US, 1981, 431 F.2d 354, WHITE V WILSON, 1990, 897 F.2d 103, JOHN V LUCIANO, 1987 F.2d 1017

C-112 15th CAUSE OF ACTION.

THE U.S. BUREAU OF PRISONS, AND ITS REPRESENTATIVES, HAVE VIOLATED THE TERMS OF THE AMERICANS WITH DISABILITIES ACT (42 USC 12101), THE CRIMINAL JUSTICE ACT, AND THE BILL OF RIGHTS FOR THE MENTALLY ILL (42 USC 10841).

C-113

THEY HAVE TREATED THE MENTALLY ILL WORSE THAN SENTENCED PRISONERS. THEY DO NOT PROVIDE INDIVIDUALIZED CARE OR TREATMENT PARTICULARIZED TO THE TYPE OF DISABILITY AND THE CHARACTER OF THE DISABLED PERSON. THEY DO NOT PROVIDE A HOSPITAL-LEVEL ADVOCATE FOR CIVIL PATIENTS. THE ACCOMMODATIONS ARE FOR CONFINED AND SENTENCED PRISONERS NOT FOR THE MENTALLY DISABLED. STAFF IS UNQUALIFIED IN THE CARE OF THE CRIMINAL AND THE MENTALLY DISABLED PATIENT; AND DO NOT USE PROFESSIONAL JUDGMENT;

C-114

PIRETS HAS BEEN ABUSED, MISTREATED, ASSAULTED, THREATENED, TORTURED, AND TERRORIZED BY U.S. BUREAU OF PRISON EMPLOYEES IN HIS 20 YEARS OF INCARCERATION. OFFICERS OF THE BOP HAVE BEATEN HIM WHILE HE WAS RESTRAINED, CHAINED HIM TO A WALL AND SPRAYED HIM WITH FIRE HOSES AND CHEMICAL FIRE EXTINGUISHERS; HANDCUFFED HIM TO A FENCE AT NIGHT IN RAINSTORMS, SNOWSTORMS, AND SURFACE HEAT, DEPRIVED HIM OF FOOD, CLOTHING, SHELTER, AND MEDICAL CARE, USED BRUTALITY ON HIM FOR REASONS OTHER THAN MEDICAL, CONFINED TO ISOLATION, SEGREGATION, AND QUARANTINE WITHOUT ANY LEGITIMATE REASONS AND WITHOUT ANY DUE PROCESS, HANGED ON DECKS AND FENCES BY HEADLOCKS OR WRISTS OVER THE HEADS WITH FEET OFF THE FLOOR, STRAPPED TO BED IN STUPID RESTRAINTS FOR 5 DAYS. BECAUSE OF BEING 10 MINUTES LATE FOR AN APPOINTMENT AND THEN BURNED WITH HOT CIGARETTES AND HOT COFFEE WHILE IN RESTRAINTS, AND MANY OTHER OUTRAGEOUS ACTS OF TORTURE WHICH WAS NOT DOCUMENTED - BUT ADMITTED TO. ONE JEW DOCTOR READ PIRETS RECORDS AND TRIED TO MURDER PIRETS BY DIAGNOSING PIRETS AS A DIABETIC AND CLAIMING IT WAS HIS DUTY TO SHOT PIRETS. LEE GAVE INSULIN (THE U.S. MARSHALS DELIVERED PIRETS TO PRISON HIM TO COAST ON INSULIN JUST 15 MINUTES BEFORE THE SCHEDULED INJECTION) ALL THE WHILE IS DOCUMENTED - AND MORE! BUT, TO ALL THE 20 YEARS PIRETS HAS BEEN CHAINED. ALL HIS SUFFERING WAS IN RETALIATION FOR SUFFERING - PROBABLY FOR FILING COMPLAINTS OF THE ABUSE TO COURT.

C-115 16th CANCELS OF ACTION

WHEN PHELPS ENTERED THE INSTITUTION, HE HAD NO PERSONAL PROPERTY BECAUSE THE B O P. WOULD NOT ALLOW HIS PROPERTY TO BE TRANSPORTED WITH HIM EVEN THOUGH HE WAS TRANSPORTED ON A PRIVATE JET AIRCRAFT AND THERE WAS AMPLE ROOM FOR THE PROPERTY.

C-116 OVER A MONTH LATER THE PROPERTY ARRIVED FROM HIS PREVIOUS PRISON AT BUTNER NORTH CAROLINA. SEVERAL ITEMS WERE NOT ALLOWED SIMPLY BECAUSE THEY WERE NOT SOLD TO INMATES AT BUTNER (BUT WAS SOLD TO INMATES AT BUTNER). THE WARDEN POLICY IS "IF WE DON'T SELL IT HERE - YOU CAN'T HAVE IT."

C-117 PHELPS HAD IN HIS POSSESSION BIBLE LESSONS WHICH THE OFFICERS WOULD NOT ALLOW PHELPS TO HAVE BECAUSE OF ITS RELIGIOUS CONTENT. ALL THE LITERATURE WAS RELIGIOUS AND WERE LESSONS ON THE SCRIPTURE OF THE CHRISTIAN HOLY BIBLE, AS RELATED TO SOCIETY, GOVERNMENTS, PEOPLE, CULTURE, AND WORLD EVENTS.

C-118 NOTHING IN THE LITERATURE ADVERTISED THE DISRUPTION OR OPERATION OF THE INSTITUTION. THE REGULATION CITED FELTON'S 1st, 5th, AND 9th (COMMON LAW) RIGHTS AS WELL AS HIS RIGHTS UNDER 42 USC 2000bb - 2000bb + (RELIGIOUS FREEDOM RESTORATION ACT) BECAUSE HIS REGULATION TEACHES HE MUST STUDY TO SHOW HIMSELF APPOINTED OF GOD (2 TIMOTHY 2:15, 1 THESSALONIANS 4:11) SEE BRYANT V. LOMBARD, 90 (1995), 46 F.3d 548; HERNANDEZ V. COMMISSIONER, 1988, 490 U.S. 696, 110 S.Ct. 1801, 108 L.Ed.2d 508 (1988); THE CONSTITUTION ALSO GUARANTEES THE RELIGIOUS RIGHTS GUARANTEED BY FEDERAL LAW REGARDING INSTITUTIONS (42 USC 200000)

C-119 CAN A INSTITUTION, OR FACILITY, IMPOSE CONDITIONS AND RESTRICTIONS UPON A PERSON IF WHEN IT DOES NOT HAVE DUE CARE CUSTODY? CAN PRISON RULES BE APPLIED TO CHALLENGED BORN MENTAL PATIENTS WHEN INTERFERE WITH THE PERSONS RELIGIOUS BELIEFS

C-120 THE PRISON ALLOWS THE NEW WHITE TEACHINGS OF ISLAM, MODERN SCIENCE, BODHI, HINDU, JUDAISM, CHRISTIANITY, BAPTIST, ETC BUT WILL NOT ALLOW TEACHINGS OF WHITE SUPREMACY (SEE PROCTOR V. ARIZONA, 40 (1987), 827 F.2d 654-6658 - AFFIRMING SUPREMACY POLICY IS INADEQUATE TO SAFETY CONFINEMENT)

SUMMARY AND CONCLUSION

- C-126 1. FIRST THE COURT MUST DETERMINE ITS OWN JURISDICTION (STEELER V CITIZENS, 1998, 523 U.S. 83 AT 94). A COURT MUST FIRST ASSESS VIOLATIONS OF LAW AND THEN CONSIDER WHO THE COURT JURISDICTION (DELL V. HORN, 1996, 527 U.S. 678, GIUENIS V. BUREAU OF IMMIGRATION AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, 1971, 403 U.S. 533; ALEXANDER V. COMMISSIONER, DEC 1987, 825 F.2d 499 AT 502 (COURT HAS INHERENT POWERS TO ACT IN THE INTEREST OF JUSTICE); IF THE COURT HAS JURISDICTION, IT MUST
- C-127 2. DETERMINE IF 18 USC 4243 CAN BE APPLIED TO PRISONERS AND THAT REQUIRES A STATUTORY ANALYSIS. WORDS OF A STATUTE MUST BE GIVEN THEIR PLAIN MEANING (CAMP, MATTI V. U.S., 1987 242 U.S. 479 AT 485), AND TO LOOK TO THE INTENT OF CONGRESS (US GOVERNMENT V. SIMMONS, 1993, 507 U.S. 19 AT 104). THE STATUTE REQUIRES A CRIMINAL ACT BEFORE IT CAN BE APPLIED (WILLIAMS V. UNITED STATES, 11/1983, 754 F.2d 1431). IF PRISONER DID NOT COMMIT A CRIME (AND THE GOVERNMENT HAS PROVEN HE DID NOT) THEN THE LAW IS INAPPLICABLE AND THE MATTER SENDS BECAUSE WHATEVER HAPPEN THEREAFTER IS UNLAWFUL. IF PRISONER IS UNLAWFUL UNDER THE JURISDICTION OF 18 USC 4243, THEN THE COURT MUST
- C-128 3. DETERMINE IF THE U.S. ATTORNEY GENERAL MISAPPLIED THE LAW. COURTS CAN REVERSE DECISIONS WHEN THERE IS A MISAPPLICATION OF LAW OR A VIOLATION OF THE BASIC LEGAL STANDARDS (PURCELL V. PURCELL, 10/1981, 641 F.2d 1006 AT 1007) IF THE ATTORNEY GENERAL MISAPPLIED THE LAW, THE COURT CAN SEND THE GOVERNMENT BACK TO COURT. AFTER THAT IS UNLAWFUL. IF HE DID NOT, THE COURT MUST
- C-129 4. DETERMINE IF THE U.S. BUREAU OF PRISONS HAS LAWFUL CUSTODY OF PRISONER. A PERSON CANNOT BE INCARCERATED WITHOUT A CONVICTION (SHAW, MICHAEL 1977, 443 U.S. 151 AT 144; 18 USC 4001(C)) AND WHEN THE BOP IS NOTIFIED THAT A PRISONER MAY BE FINELY INCARCERATED, THE BOP HAS A DUTY TO REINSTATE THE VALIDITY OF THE INCARCERATION (MURPHY V. CITY OF LA, 4/1988, 141 F.2d 1373 AT 1381) WHEN THE BOP WAS NOTIFIED IN 1942 THAT PRISONER DID NOT COMMIT THE CRIME, IT DID NOTHING. IF THE BOP HAS LAWFUL CUSTODY OF PRISONER, THE COURT MUST
- C-130 5. DETERMINE IF THE BOP EMPLOYEES HAVE LAWFUL JURISDICTION AND AUTHORITY TO ACT. A STATUTE

CANNOT grant JURISDICTION WHERE THE CONSTITUTION FORBIDS IT (GILSON v. REPUBLIC OFFICERS, 1982, 682 F.2d 1022 at 1028). IF THE EMPLOYEES HAVE NO LEGAL AUTHORITY TO ACT, THEN WHATEVER THEY DO IS UNLAWFUL. IF THE EMPLOYEES HAVE JURISDICTION, THE COURT MUST

C-131 6. DETERMINE IF THE EMPLOYEES HAVE PROPERLY APPLIED THE LAWS AND BOP RULES. RULES MUST BE BASED ON STATUTORY AUTHORITY (DET. DEAN E. DE, 1987, 502 F.2d 101) AND CANNOT STAND NOT WITHSTANDING STRIKE DECISIONS BOP RULES THAT ARE UNCONSTITUTIONAL (SHAFER v. SIMMONS, 1972, 349 F.Supp 268). IF RULES REQUIRE EMPLOYEE CONSENT, AND EMPLOYEES VIOLATE THAT RULE, THERE IS NO STRIKE FROM LIABILITY (LOMBARD v. US, 1991, ___ US ___, 113 S.Ct. 535). IF A RULE IS IN CONFLICT WITH A LAW IT IS UNCONSTITUTIONAL (US v. HECKARD, 1961, 238 F.2d 122 at 123) AS LER 551.101 IS IN CONFLICT WITH 18 USC 4243 AND US v. JENKS, 1993, 463 US 354. IF THE RULES ARE PROPER -

C-132 7. THE COURT MUST DETERMINE IF THE ACTIONS OF THE EMPLOYEES ARE LAWFUL, THE EMPLOYEES MUST BE QUANTIFIED AND MUST ACT PROFESSIONALLY (YOUNGBERG v. ROPELO, 1982, 457 US 307). THE EMPLOYEES KNOW THAT THEY CANNOT TREAT PRISONERS AS A CONFINED PRISONER (LOCK v. JENKINS, 1978, 441 F.2d 488) AND MUST TREAT THEM BETTER (HAMILTON v. LEE, 328 F.2d 113) AND MUST MAKE PROFESSIONAL JUDGMENTS (SHAFER v. SIMMONS, 1972, 349 F.Supp 268), IF THE EMPLOYEES HAVE NOT ACTED PROPERLY OR LAWFULLY, THE COURT MUST

C-133 8. DETERMINE THE LEVEL OF INJURY INFLICTED ON PRISONERS, AND

C-134 9. THE AMOUNT OF DAMAGES IS ASKED FOR VIOLATING PRISONERS' 1st, 4th, 5th, 8th, 9th AMENDMENT RIGHTS UNDER THE US CONSTITUTION AND FOR VIOLATING THE PROVISIONS OF 18 USC 241-242, 18 USC 4243 AND 4247, 18 USC 801(c), 42 USC 10341, 42 USC 2006b-2006c, 42 USC 12101, 50 USC 552-552L OTHER FEDERAL LAWS, FEDERAL REGULATIONS, BUREAU OF PRISON RULES AND POLICIES, CODE OF ETHICS AND EMPLOYEES CONDUCT, COMMON LAW, AND SUPREME COURT LAW, AND FOR OTHER REASONABLE PHYSICAL, MENTAL, EMOTIONAL, AND SPIRITUAL LOSS, HARM, INJURY, ABUSION, DISTRESS, PAIN, AND SUFFERING.

II

C-135

PRAYER AND RELIEF

PHELPS PRAYS THAT THIS COURT RECOGNIZES THAT PHELPS IS A UNCONFINED CIVIL INMATE PATIENT (NOT A CONFINED CRIMINAL PRISONER) AND THAT THE COURT USES THE STANDARDS OF "PATIENTS RIGHTS" AND NOT PRISONERS RIGHTS AS EXEMPLIFIED IN US V JONES, 1981, 546 A2d 183, 411 A2d 624, 432 A2d 364, 463 U.S. 554, YOUNGBERG V REMUE, 1982, 457 U.S. 507; PARNELL V US, 1974, 442 U.S. 584; FULLIN V LOUISIANA, 1992, 504 U.S. 71; PENNINGS V INDOCHINA, 451 U.S. 1; MAGNUS V PATIENT HOSPITAL, 1972, 407 U.S. 245; MURPHY V CHRY, 1972, 405 U.S. 504; RODGE V KLEIN, 1979, 453 U.S. 119; COCHRAN V DELAWARE, 1987, 462 U.S. 563; DESHANEY V GONZALES, 1989, 489 U.S. 189; CHESTERHOP HOSP V N.L., 10/1972, 689 F2d 1132, US PRISON V NJ, 1977, 431 U.S. 1; BATTEE V ANDERSON, CO ARK 1974, 376 F.Supp 406, 457 F.Supp 119, 447 F2d 516, 564 F2d 183, 574 F2d 784, 614 F2d 251, SOCIETY GERMANY, 731 F2d 1259; BCC V GERMANY, 10/1984, 729 F2d 96 AND OTHER CASES INVOLVING NON-PRISONER CIVIL PATIENTS;

PHELPS PRAYS THAT THIS COURT FOLLOWS THE ADJUDICATIONS OF THE COURT IN REMOE V YOUNGBERG, 1982, 644 F2d 147 AFF 457 U.S. 507 THAT IT CANNOT TAKE CRIMINAL DECISIONS FOR CONFINED PRISONERS AND APPLY THOSE DECISIONS TO CIVIL COMMITMENTS;

PHELPS PRAYS THAT THIS COURT USES THE TOTALITY OF CIRCUMSTANCES STANDARDS IN ASSESSING THE CONDITIONS OF CONFINEMENT

PHELPS PRAYS THE COURT USES THE INTERNATIONAL SECURITY STANDARDS IN INTERPRETING TREATIES AND THE ABSOLUTE STANDARD

PHELPS PRAYS FOR RELIEF AND REDRESS

PHELPS PRAYS FOR DECLARATORY JUDGMENT AND REQUEST THE COURT TO DECREE;

1. PHELPS DOES NOT FALL UNDER THE JURISDICTION OF 18 USC 4243 IF HE IS ACTUALLY INNOCENT AND DID NOT COMMIT A CRIME BECAUSE THE STATUTE REQUIRES A CRIME TO HAVE BEEN COMMITTED;

2. THE FEDERAL GOVERNMENT DOES NOT HAVE A CIVIL HOSPITAL IN WHICH TO CONFINEMENT MENTAL INMATE ALIEN CITIZENS AND 18 USC 4243 REQUIRES "HOSPITALIZATION";
3. THERE ARE NO PROVISIONS IN THE FEDERAL MENTAL HEALTH LAW THAT ALLOWS, OR AUTHORIZES, FEDERAL CONFINEMENT OF INMATE ALIEN CITIZENS OR OTHER FEDERAL CIVIL COMMITTEES;
4. THE U.S. ATTORNEY GENERAL ABUSED HIS DISCRETION, MADE CLEARLY ERRONEOUS INTERPRETATIONS AND CONCLUSIONS OF LAW AND FACT, AND THEN MISAPPLIED THE PROVISIONS OF 18 USC 4243 AND 18 USC 4247;
5. NEITHER THE COURTS NOR THE U.S. ATTORNEY GENERAL HAVE LAWFUL JURISDICTION OR AUTHORITY TO COMMIT INMATE ALIEN CITIZENS TO THE CUSTODY, AND CONFINEMENT, OF THE U.S. BUREAU OF PRISONS;
6. THE U.S. BUREAU OF PRISONS DOES NOT HAVE LAWFUL CUSTODY, JURISDICTION, OR AUTHORITY OVER PRISONERS OR ANYONE COMMITTED UNDER 18 USC 4243 OR 18 USC 4246;
7. EMPLOYEES AND MEMBERS OF THE U.S. BUREAU OF PRISONS (REGULAR OR UNDER CONTRACT) DO NOT HAVE LAWFUL CUSTODY, JURISDICTION, OR AUTHORITY OVER PRISONERS OR ANYONE SUBJECT TO 18 USC 4243 OR 18 USC 4246; THEY ACTED IN ABSENCE OF ANY LAWFUL JURISDICTION;
8. EMPLOYEES AND MEMBERS OF THE U.S. BUREAU OF PRISONS ARE NOT LEGALLY QUALIFIED TO CARE FOR, OR TREAT PRISONERS OR ANYONE SUBJECT TO 18 USC 4243 OR 18 USC 4246;
9. THERE IS A LEGAL AND CONSTITUTIONAL DIFFERENCE BETWEEN UNCONFINED CIVIL MENTAL PATIENTS AND CONFINED CRIMINALLY SENTENCED PRISONERS AND UNCONFINED CIVIL PATIENTS CANNOT BE TREATED AS CONFINED OR SENTENCED PRISONERS;
10. UNCONFINED CIVIL PATIENTS HAVE MORE RIGHTS AND PRIVILEGES THAN PRISONERS, DETAINees OR CONFINED PRISONERS;
11. UNCONFINED CIVIL MENTAL PATIENTS HAVE, AT LEAST, THE SAME, OR GREATER, RIGHTS OF A PERSON ON HOUSE CONFINEMENT;
12. UNCONFINED CIVIL MENTAL PATIENTS CANNOT BE SUBJECTED TO THE RULES AND REGULATIONS OF A JAIL OR PRISON AND MUST HAVE THEIR OWN SPECIFIC PARTICULARIZED SET OF RULES AND REGULATIONS DESIGNED TO PROMOTE HEALING, RECOVERY AND REHABILITATION;

13. THE SUPERVISORY STAFF OF THE U.S. BUREAU OF PRISONS FAILED TO PROPERLY AND ADEQUATELY TRAIN AND SUPERVISE SUBORDINATE B.C.P. MEMBERS IN THE CARE, TREATMENT, AND PROVIDING SERVICES FOR UNCONFINED CIVIL MENTAL PATIENTS
 14. THOSE COMMITTED UNDER 18 USC 4243 OR 18 USC 4246 MUST BE TREATED AS PATIENTS - NOT PRISONERS; AND HAVE A ADVOCACY - 350 42 USC 10304
 15. PHELPS SUFFERED UNLAWFUL AND UNCONSTITUTIONAL ABUSE AND MISTREATMENT BY U.S. BUREAU OF PRISON EMPLOYEES AND MEMBERS;
 16. PHELPS HAS BEEN UNLAWFULLY AND UNCONSTITUTIONALLY INCARCERATED AND IMPRISONED IN THE U.S. BUREAU OF PRISONS
 17. PHELPS HAS SUFFERED A DEPRIVATION, DENIAL, AND VIOLATION OF HIS CONSTITUTIONAL, STATUTORY, CIVIL, AND COMMON LAW GUARANTEES, FREEDOMS, LIBERTIES, RIGHTS, PRIVILEGES, IMMUNITIES, PROTECTIONS, AND SAFEGUARDS
 18. THE RESPONDENTS KNEW THE CONSTITUTION AND LAWS, AND UNDERSTOOD THE CONSTITUTION AND THE LAWS, BUT STILL KNOWINGLY, INTENTIONALLY, AND WILLINGLY ACTED CONTRARY TO THE CONSTITUTION AND THE LAWS; AND ACTED WITHOUT PROFESSIONAL JUDGMENT;
 19. THE RESPONDENTS CAUSED PHELPS PROFOUND PHYSICAL, MENTAL, EMOTIONAL, AND SPIRITUAL LOSS, TRAUMA, INJURY, ANXIETY, DISTRESS, PAIN, AND SUFFERING;
 20. PHELPS HAS SUFFERED A MISFEASANCE OF JUSTICE AND A MANIFEST INJUSTICE AND BOTH ARE COMPELLABLE UNDER THE CONSTITUTION AND THE LAWS;
 21. PHELPS IS A PATIENT - NOT A PRISONER - AND LAWS AND RULES FOR PRISONERS DO NOT APPLY TO HIM.
- PHELPS PRAYS FOR POSITIVE DAMAGES IN THE AMOUNT OF TWO MILLION (2,000,000) TAX FREE DOLLARS FROM EACH RESPONDENT,
- PHELPS PRAYS FOR ATTORNEY FEES AND COST;
- PHELPS PRAYS FOR INJUNCTIVE RELIEF ENSURING THE B O P. FROM CONFINING ANY PERSON SUBJECT TO THE PROVISIONS OF 18 USC 4243 OR 18 USC 4246;
- PHELPS PRAYS FOR ANY OTHER RELIEF AND REMEDY THE COURT DEEMS FAIR, JUST, PROPER, LAWFUL AND EQUIVOCAL TO PROMOTE JUSTICE, TO PREVENT A MISFEASANCE OF JUSTICE, AND TO MEET THE ENDS OF JUSTICE

RESPECTFULLY SUBMITTED ON THIS 30th DAY OF JANUARY, 2005

Gay Phelps

IN PRO SE

COY PITELPS 78872-011

FMC - DENVER

42 PATTON ROAD

P.O. BOX 879

AYER, MA 01432

C-136

CERTIFICATION

I, COY PITELPS, CERTIFY UNDER PENALTY OF PERJURY, PURSUANT TO 28 USC 1746, THAT

I AM THE PETITIONER IN THIS ACTION AND THAT ALL THE STATEMENTS MADE HEREIN

WERE MADE BY ME, AND THAT ALL THE STATEMENTS ARE TRUE AND CORRECT

ACCORDING TO MY BEST KNOWLEDGE AND BELIEF

DATE: 1-30-2005

Gay Phelps

IN PRO SE

COY PITELPS 78872-011

FMC - DENVER

42 PATTON ROAD

P.O. BOX 879

AYER, MASSACHUSETTS

01432

CERTIFICATE OF SERVICE

SEE THE SERVICE INFORMATION ON THE REVERSE SIDE OF THE SUMMONS

Gay Phelps